

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: |

CONSOLIDATED P.U.D. AND MAP | Case No. 01-09C
AMENDMENT @ SQUARE 720, LOTS 178 |
AND 179 -- STATION PLACE |

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Monday
December 3, 2001

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No. 01-09C by the
District of Columbia Zoning Commission convened at 6:30 p.m. in
the Office of Zoning Hearing Room at 441 4th Street, N.W.,
Washington, D.C., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
JAMES HANNAHAM	Commissioner
PETER G. MAY	(Architect of the Capitol)
JOHN G. PARSONS	Commissioner

COMMISSION STAFF PRESENT:

Alberto P. Bastida, Secretary, Zoning Commission

OTHER AGENCY STAFF PRESENT:

David McGhettigan, Office of Planning

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(6:30 p.m.)

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Monday, December 3, 2001.

My name is Carol Mitten. Joining me this evening are Vice Chairman Anthony Hood and Commissioner John Parsons. We are expecting Commissioners Peter May and James Hannaham shortly.

This evening's hearing is a continuation of our November 8th and November 29th public hearings. This hearing is being conducted in accordance with the provisions of 11 DCMR ? 3022 for contested cases.

The subject of this evening's hearing is Zoning Commission Case No. 01-09C which is a request by the Louis Dreyfus Property Group for a consolidated review and approval of a planned unit development and zoning map amendment under Chapter 24 of the District of Columbia Zoning Regulations for the Station Place Development located at 2nd and F Streets, N.E.

Copies of today's Hearing Announcement are available to you and are located to my left near the door.

The order of procedure will be as follows: We're down to parties and persons in opposition followed by rebuttal by the Applicant.

The following time constraints will be maintained

1 in this hearing. Parties will be given fifteen minutes with the
2 exception of the Stanton Park Neighborhood Association who will
3 have twenty minutes. Organizations will have five minutes.
4 Individuals will have three minutes.

5 And just so it's clear, only one person may
6 testify on behalf of a given organization and get the five
7 minutes. Anyone else will get three minutes.

8 The Commission intends to adhere to these time
9 limits as strictly as possible in order to conclude this hearing
10 this evening. The Commission reserves the right to change the
11 time limits for presentations if necessary and notes that no
12 time shall be ceded.

13 All persons appearing before the Commission are
14 to fill out two witness cards. These cards are located on the
15 table by the entrance door. Upon coming forward to speak to the
16 Commission, please give both cards to the Reporter sitting to my
17 right.

18 We will use the sign in sheet from the previous
19 two hearings and then we'll pick up anyone else who's signing in
20 tonight at the end.

21 The decision of the Commission in this case must
22 be based exclusively on the public record. To avoid any
23 appearance to the contrary, the Commission requests that persons
24 present not engage the members of the Commission in conversation
25 during a recess or at any other time.

1 The staff will be available throughout the
2 hearing to discuss procedural questions. Please turn off all
3 beepers and cell phones at this time so as not to disrupt these
4 proceedings.

5 At this time, the Commission will consider any
6 preliminary matters. Mr. Bastida, do you have any preliminary
7 matters?

8 MR. BASTIDA: The staff has no preliminary
9 matters, Madam Chairman.

10 CHAIRPERSON MITTEN: Mr. Quin?

11 MR. QUIN: Yes, Madam Chairperson, just three
12 brief preliminary matters. First, while the Applicants have
13 described in pretty much detail our Construction Management Plan
14 and actually submitted a draft with our Prehearing Statement,
15 we'd like to submit for the record a composite Construction
16 Management Plan which includes updated items and items that
17 we've talked to the ANC about so that it's a complete
18 Construction Plan.

19 CHAIRPERSON MITTEN: And has this been given to
20 the Division of Transportation now because there seemed to be
21 some --

22 MR. QUIN: Yes.

23 CHAIRPERSON MITTEN: -- Lack of clarity about
24 that.

25 MR. QUIN: Yes, it was submitted on what date?

1 On Friday.

2 CHAIRPERSON MITTEN: Okay.

3 MR. QUIN: Right after the hearing.

4 CHAIRPERSON MITTEN: Okay. So they haven't yet
5 responded I take it. It's been given to them.

6 MR. QUIN: Yes, that's correct.

7 CHAIRPERSON MITTEN: Okay.

8 MR. BASTIDA: Madam Chairman. The DPW would like
9 to have the file open until the tenth of December to be able to
10 submit their report regarding that matter and a couple of other
11 things that were asked. So they requested to have the record
12 upon until such and such a date.

13 CHAIRPERSON MITTEN: Okay. We'll be at least at
14 the tenth of December.

15 MR. BASTIDA: Right.

16 CHAIRPERSON MITTEN: Okay.

17 MR. BASTIDA: Thank you.

18 CHAIRPERSON MITTEN: Excuse me.

19 MR. QUIN: I'm sorry. The second item is, as we
20 point out and a note in this report also commented, we're
21 seeking very little over matter of right. And you will hear a
22 lot of testimony that will go to, and opposition that will go
23 mainly to things that actually are a matter of right.

24 But I just wanted to submit for the record a
25 memorandum which we prepared which deals with the limitations on

1 the requirement for amenities which I think should be part of
2 this record.

3 It relates to a tendency by some to view PUD's as
4 something that would allow, some people refer to it as a
5 Christmas tree opportunity. That wasn't my -- I didn't say
6 that, but I may have thought it.

7 CHAIRPERSON MITTEN: I think we have that on the
8 record about who said that.

9 MR. QUIN: Right. And then -- so, Ms. Shiker's
10 handing that in for the record. And then the last point is
11 under the Rules of the Commission and the Administrative
12 Procedures Act.

13 I'd like to object to and note an objection to
14 the consideration of one of the areas that the Capitol Hill
15 Restoration Society has some proposed testimony about.

16 And that's an Environmental Report filed by
17 Braggman & Company. This concerns the Dreyfus' environmental
18 consultants internal due diligence report that was just part of
19 the process. It's nothing we're seeking approval of for the
20 Zoning Commission.

21 There is a letter that's referenced that went to
22 the Department of Health but it has absolutely nothing to do
23 with zoning and has to do with subsoil conditions and how you
24 deal with underground storage tanks and the like.

25 And I'd just like to note that for the record so

1 that when we get there, you'll know that I have interposed an
2 objection to considering that report and any testimony related
3 thereto.

4 CHAIRPERSON MITTEN: All right. I think we're
5 going to be just a little bit lenient about letting some of the
6 environmental information in just so that -- and we will -- the
7 Commission will sort out what's relevant and what's not
8 relevant.

9 But given that, among other things, we have a
10 recommendation from the Office of Planning that because this is
11 not subject to the same level of scrutiny in the environmental
12 review process that it is appropriate that some level of
13 environmental review take place before the Commission.

14 So I think we'll sort that out on perhaps on the
15 back end and let a little bit more into the record. And I note
16 your objection and there may be a few other things that come in.

17 But perhaps the way to handle it would be after
18 the information comes in, you could note specific information
19 that you think is not relevant because it's handled by the
20 Department of Health or DCRA. Can we handle it that way?

21 MR. QUIN: Yes, we can. I think once you see
22 what the report is, it's commenting on a due diligence which
23 every purchaser goes into.

24 CHAIRPERSON MITTEN: Yes.

25 MR. QUIN: It has nothing to do with this PUD.

1 Everybody that would be developing land would go through the
2 same process for due diligence. And it's not seeking any zoning
3 opinion or any -- it's not the type of environmental situation
4 that would normally come before you. It's different and you'll
5 see that.

6 CHAIRPERSON MITTEN: Okay.

7 MR. QUIN: So, thank you.

8 CHAIRPERSON MITTEN: Thank you.

9 MR. QUIN: We will have -- no, let's wait.
10 Thanks. Thank you.

11 CHAIRPERSON MITTEN: Now any individual that has
12 not been sworn in at one of the previous hearings that wishes to
13 testify this evening, now would be the time to rise to take the
14 oath. Please rise.

15 Mr. Bastida?

16 MR. BASTIDA: Do you swear and affirm that what
17 you are about to testify is the truth but nothing but the truth?

18 (Chorus of yeses.)

19 MR. BASTIDA: Thank you.

20 CHAIRPERSON MITTEN: Thank you. We'll begin with
21 the Stanton Park Neighborhood Association.

22 Mr. Bastida, can we have twenty minutes on the
23 clock?

24 MR. BASTIDA: Yes.

25 CHAIRPERSON MITTEN: And I would note for the

1 record that Commissioners Hannaham and May have arrived.
2 Whenever you're ready Mr. Edwards.

3 MR. EDWARDS: Thank you. My name is Monte
4 Edwards. I have lived in the 300 block of E Street since 1984.

5 While Stanton Park Neighborhood Association is classified as a
6 Party in Opposition for the purpose of this proceeding, I would
7 like to note three facts.

8 First, Stanton Park Neighborhood Association
9 regards the replacement of the surface parking lot with an
10 office building on this site as an improvement to the
11 neighborhood.

12 Number two, we welcome the Securities and
13 Exchange Commission as a neighbor.

14 Number three, we do have concerns about specific
15 elements of the design that need to be addressed to make the
16 project a better neighbor.

17 Now, as in the case with any neighborhood
18 association, our presentation is not the unanimous view of every
19 member in the association. Our presentation is a consensus that
20 has evolved just as the project has evolved over several months.

21 Our presentation will consist of two witnesses.
22 The first will be Drury Tallant, on my left, who, with me, co-
23 chairs the Stanton Park Neighborhood Association Land Use
24 Committee. Drury will primarily address the amenities
25 associated with the project.

1 Our second witness, on my right, is Charles
2 McMillion. Charles chaired the Joint Capitol Hill Restoration
3 Society/Stanton Park Neighborhood Association Task Force on this
4 project. Charles will provide an overview and summary of the
5 various reports of the team leaders of the task force, copies of
6 which were provided at our last hearing.

7 The team leaders that prepared those reports are
8 available here tonight to answer questions and Charles will
9 introduce them as part of his presentation.

10 CHAIRPERSON MITTEN: Thank you.

11 MR. EDWARDS: Now I'd like to turn it over to Mr.
12 Tallant.

13 MR. TALLANT: Thank you. My name is Drury
14 Tallant. I live at 730 3rd Street which is one of the squares
15 immediately east of the subject property.

16 Dreyfus Property Group has requested the
17 following flexibility and concessions: an expedited review
18 process that permits construction of what is essentially a
19 federal undertaking with less review than would otherwise be the
20 case. Given the SEC's mandate that the building be completed by
21 January 2004, the expedited review process is a very significant
22 benefit.

23 Second, the change in the underlying zoning and
24 the reduction in the amount of required parking is a benefit
25 accruing primarily to the Developer and their client. The loss

1 of the existing surface parking lot and the loss of existing on-
2 street parking, together with the introduction of a major office
3 building, will aggravate parking problems in the residential
4 neighborhood.

5 Third, measuring the height from the H Street
6 Bridge on two separate lots is the main zoning benefit
7 requested. Measurement from the H Street Bridge must be
8 rejected but does not preclude acceptance of the proposed
9 height.

10 However, it does amend the PUD application to one
11 in which significant design flexibility and additional height is
12 requested. The top two floors of this building exceed the
13 allowable height, some 200,000 square feet, which Dreyfus has
14 valued at \$60 million.

15 The above three items indicate that design
16 alterations and a significant amenity package are appropriate
17 and necessary conditions of the Zoning Commission's acceptance
18 of this project. Sadly, the design itself is not viewed by a
19 great many people as an amenity in and of itself.

20 SP&A hopes to work with Dreyfus, District
21 government agencies and the larger community in refining the
22 design and developing the most appropriate amenity package.

23 Because it is SP&A's opinion that any amenities
24 should be on or immediately adjacent to the site, we recommend
25 that 2nd Street and F Street be the initial focus of any

1 amenities. The design of 2nd Street should be reviewed with the
2 goal of providing the most appropriate setting for this massive
3 933-foot long building.

4 The D.C. Department of Public Works has already
5 proposed rebuilding this portion of 2nd Street and the
6 Metropolitan Branch Bicycle Trail was also to be included in
7 this area.

8 SP&A believes that a building of this height and
9 bulk should be set farther back from the street. And we
10 continue to recommend this design change. The reasons for this
11 recommendation are both aesthetic and practical.

12 First, the face of this seven- rising to ten-
13 story building is only 30 feet from the curb of 2nd Street and F
14 Street. This minimal distance does not provide an adequate
15 transition to the two- and three-story neighborhood to the east.

16 The Comprehensive Plan calls for a transitional
17 building in this area. Other large buildings along 2nd Street,
18 and the Thurgood Marshall building in particular, are set
19 significantly farther back from 2nd Street.

20 Second, security provisions for this project have
21 not been adequately described. While the development is
22 nominally private, the project is, in essence, a federal
23 undertaking. In fact, the lease structure anticipates the
24 purchase of this building by the SEC.

25 Throughout the District of Columbia our urban

1 streetscapes are being marred by hastily implement security
2 devices. Yet on this project, designed expressly for a federal
3 tenant, no physical security devices have been shown to date.

4 I strongly request that the Zoning Commission
5 require the Developer to place any and all physical security
6 devices entirely on the private property. Under the current
7 design, I believe it is apparent that the Developer intends to
8 encroach on the already minimal public space in order to
9 accommodate any physical security barriers between the face of
10 the building and the curb along both 2nd Street and F Street.

11 It is entirely inappropriate for a private office
12 building to utilize public space in order to meet the
13 requirements of their tenant. Given the current security
14 concerns for all federal office buildings, it is a serious
15 oversight to not include these elements in the design prior to
16 the Zoning Commission's approval.

17 We believe it is imminently feasible to set the
18 building farther back and that this should be required in
19 exchange for the 200,000 square feet requested above the
20 allowable height. In addition, we believe there are
21 opportunities to recapture some additional square footage by
22 increasing the upper floors on the west side of the structure
23 without necessarily reducing the absolute size of the building.

24 In addition to the setback recommended above, we
25 also recommend the following amenities as part of the amenity

1 package: additional landscaping to soften the transition between
2 this building and the lower scaled neighborhood to the east.
3 The single row of trees along F Street and along 2nd Street does
4 not provide an adequate transition.

5 The renderings of this building are very
6 misleading as to the actual pedestrian experience on both 2nd
7 Street and F Street. Access through the building into Union
8 Station is appropriate and would help make the building part of
9 the neighborhood.

10 Third, improved pedestrian access to H Street
11 will encourage redevelopment of the H Street corridor by
12 facilitating movement between H Street, Station Place, and Union
13 Station. An at-grade pedestrian connection in the H Street
14 Bridge maintenance easement could further accomplish this goal.

15 Fourth, improvements to the east side of 2nd
16 Street should be undertaken before the sidewalk on the west side
17 of 2nd Street is taken out of service. The current sidewalk is
18 badly deteriorated and several street trees are missing.

19 Other elements would also be appropriate to any
20 amenity package and we do not present the above as an exhaustive
21 list.

22 In closing, let me reinforce again the critical
23 importance of requiring that any and all physical security
24 devices be located exclusively and entirely on the project site
25 and not on public space. Thank you.

1 MR. McMILLION: Good evening. I'm Charles
2 McMillion. My wife and I have lived at 223 F Street, N.E.,
3 since 1987, half a block from the proposed PUD. We've been
4 block captains for 14 years, being involved with crime, core
5 watch, neighborhood clean up, block parties, many activities.

6 Our neighborhood's been through a lot but we've
7 created just the sort of stable, diverse residential community
8 of middle-class taxpayers that the Mayor, City Council and
9 everyone else says is a top priority.

10 As you know, the District CFO, Mr. Ghandi,
11 regularly and especially lately, explains that the District's
12 tax base is structurally non-viable because of tax exempt
13 government property, as this building may soon become, and the
14 almost exclusively non-taxpaying commuters in office buildings
15 like this one.

16 We really do believe that our vibrant
17 neighborhood of District taxpayers, District shoppers and 24-
18 hour-a-day District residents is very important to this city and
19 we hope you do, too, because what I have to say tonight in 11
20 minutes and 15 seconds is all about respecting our community of
21 District residents.

22 In June, the CHRS held a neighborhood meeting at
23 the corner of 2nd and F Streets, N.E., and organized four
24 substantive teams of residents. We've had 60 residents invest
25 over 2,000 volunteer hours in this project over the last five

1 months. And I'm really very proud of my neighbors at this
2 moment.

3 We've discussed this project with everyone that
4 we could find in town. We've submitted five reports for the
5 records. I hope that you'll spend some time with those five
6 reports. Neighbors have spent a great deal of their weekends
7 and evenings for five months writing them.

8 We've also submitted a report by a very highly
9 respected environmental engineer that we've retained at CHRS and
10 SP&A to review the materials that have been provided thus far.

11 Now, in the interest of time, I'm going to
12 summarize. But for cross examination and for any questions, I
13 hope that you'll allow the team captains to respond as well as
14 those of us sitting at the table now. Is that agreeable?

15 CHAIRPERSON MITTEN: Right. And we've had your
16 submissions and we'll probably be asking questions about some of
17 the detail in the submissions.

18 MR. McMILLION: Okay, but to the team leaders?

19 CHAIRPERSON MITTEN: Absolutely, yes.

20 MR. McMILLION: Good. The issue tonight is
21 whether this development will support or undermine our homes and
22 the stable residential character of our neighborhood. Whether
23 it will push commuters and 9-to-5 office buildings further into
24 our residential neighborhood or provide an appealing transition
25 to draw in and to better integrate our residential neighborhood

1 into Union Station and the central business district.

2 Now you've got material. Our houses are, for the
3 most part, over 100 years old. They were built for working-
4 class people, not elaborately like some of those in Dupont
5 Circle and other areas of the town. These are very fragile
6 houses built in a neighborhood called Swamp Poodle because of
7 (we've got a map, when we have time, we'll show it) a creek that
8 runs directly through our immediate neighborhood.

9 The geophysical studies submitted by the
10 Applicant reaches conclusions based solely on an examination of
11 the Station Place site and on experience in downtown Washington
12 and suburban areas.

13 They were not based on any engineering study of
14 the soils underlying the adjoining residential neighborhood nor
15 on any examination of the construction or condition affecting
16 the structural integrity of surrounding houses like mine.

17 Residents will testify later about our past
18 experience with our uniquely vulnerable homes to vibration and
19 subsidence.

20 Station Place, which has historically been a rail
21 yard and a gas station, may or may not be exempt from any public
22 review of known environmental concerns. But the Comprehensive
23 Plan does have an environmental protection element so we hope
24 that the Zoning Commission will take a special interest in this
25 aspect of this very important and very large PUD.

1 The CHRS has submitted reports to the D.C.
2 Department of Health and the D.C. Department of Consumer and
3 Regulatory Affairs. But we believe it is not appropriate that
4 the only environmental review comes as the project is finalized
5 and permits are sought.

6 CHRS obtained copies of all the reports we could
7 get from the Developer. These documents confirm petroleum
8 contamination and low levels of PCB contamination in on-site
9 soils. Petroleum released and underground storage tanks from
10 adjoining properties have also impacted subsurface conditions at
11 the site, particularly with respect to ground water.

12 The Developer, however, specifically excluded
13 from their consultant's scope of work, a first rate consultant,
14 specifically excluded from their consultant's scope of work
15 information as to the direction and hydraulic nature of ground
16 water flowing beneath the subject property.

17 Among other things, the Draft Correction Action
18 Plan does not access the possibility of ground water
19 contamination originating from the Station Place site migrating
20 to adjoining properties. Significant legal, financial, and
21 human health liabilities may be associated with either of these
22 issues.

23 Our conclusions are based on the findings of Dr.
24 Jacob Bregman, the well known environmental engineer who did the
25 EIS for Union Station.

1 Another matter which surely would have been
2 raised if this were a public environmental review is the
3 unstable soil and inadequate foundation below residential
4 buildings in the east of the site.

5 The Applicant has committed to a pre-construction
6 survey of residential properties within 200 feet of the property
7 line in order to document pre-construction condition of homes.
8 But this is clearly inadequate.

9 We ask this Commission to order the Applicant to
10 conduct a pre-construction survey to determine the status of
11 each home and building in blocks bounded by 2nd and 3rd, E and H,
12 and to allow those between 3rd and 4th, E and H to request and be
13 granted a survey if they so desire.

14 It is extremely important that an objective
15 Arbitration Panel be established to listen to concerns about
16 damage from this construction and to settle those claims. The
17 Panel should remain in force until all construction is complete
18 on the site and all findings of the Panel must be binding on all
19 parties.

20 Truck penalties, we have a big problem with heavy
21 vehicles on this street. We need an enforcement plan and it
22 needs to be penalized with significant, perhaps \$500 per event,
23 penalties.

24 Traffic and parking -- in the back of my
25 testimony that you have a copy of, you see the parking lot. The

1 150 cars that park there everyday that Thurgood Marshall is
2 concerned with is roughly half of the people that park there.
3 This is a lot of people that are being displaced with no place
4 to go.

5 This is a difficult issue for our community. We
6 are concerned with that. We're also concerned that metered
7 parking on F Street between Union Station and 2nd, and metered
8 parking between F Street and H Street be maintained during
9 construction. We're losing a lot of parking. And this is an
10 area where parking is a huge issue already.

11 H Street connection -- we need to have the ramp
12 to H Street built just as soon as possible and certainly before
13 any occupants move into that building.

14 Now the design and scale, as Drury has indicated,
15 has been really perhaps the key issue that we've battled with
16 the Developer over these five months. The CFA has forced some
17 design changes to break up this 933-foot monolithic facade that
18 was initially proposed, a design that the CFA Chairman likened
19 to a beached whale.

20 This has been precisely the community's reaction
21 with a unanimous vote of rejection from those expressing an
22 opinion at a Dreyfus-organized presentation in September, the
23 second and last public presentation. We've had no public
24 presentation since then.

25 However, the CFA did not address the problem of

1 transition to the historic residential neighborhood. Indeed,
2 there has never been a perspective showing the relationship
3 between the 25-foot tall neighborhood buildings and the 90-foot
4 tall Station Place building across 2nd Street.

5 The Applicant's view down F Street, which you
6 have in your submissions here, is in fairly stark contrast to
7 that that you have in the back of my testimony today that I took
8 last Friday morning early. I wish you would compare the two.

9 Also, the view that they have, the only view that
10 they have down 2nd Street, which is really the key, as the CFA
11 and everybody else has agreed, to making this project work, the
12 only view that they have down 2nd Street is a very romantic
13 perhaps, but idealized view. You would have to be standing in a
14 place called Capitol Court, several hundred yards away, and a
15 hundred yards inside the block in order to get this view.

16 Again, you have a view, the last page of my
17 testimony that you have, which is an actual view from the street
18 there in looking down 2nd Street.

19 But notice, if you would, in the one picture that
20 they have, the artist rendition picture that they do have down F
21 Street, even though it is several hundred yards back and several
22 hundred yards into the Capitol Hill Historic District, which is
23 adjacent to this site, you'd have to wipe out an entire half
24 block of historic homes in order to see this view.

25 But even if you could see this view, notice that

1 the courtyards that you've heard so much about are not visible,
2 the 20-foot setback for Building 2 that you've heard something
3 about is virtually not visible. In other words, the little
4 setback that exists is between two buildings that are built
5 right to the property line.

6 We think this really does not help in the
7 articulation and it gives a very monolithic and austere view of
8 this 933-foot project.

9 Let me just -- this is wild trying to do this in
10 11 minutes -- but let me try to. The deeper setback at the 2nd
11 and F Street portion of the building which we are requesting, as
12 Drury has asked, a deeper setback to line up with the Thurgood
13 Marshall Building and the other buildings on that street, the
14 Comprehensive Plan called for a transition between areas of high
15 and low density, high and low height --

16 CHAIRPERSON MITTEN: You're going to need to wrap
17 it up and like I said, we've read all your submissions --

18 MR. McMILLION: Okay.

19 CHAIRPERSON MITTEN: -- and we'll be asking you
20 some detailed questions.

21 MR. McMILLION: Well let me just -- let me then
22 just wrap it up by saying that at the November 8th hearing, the
23 architect, Mr. Roche, testified that increasing the setback to
24 64 feet for Building 1, in other words, moving it 30 feet back
25 from the property line to align with Thurgood Marshall, would

1 reduce the interior space by only 65,000 square feet. We
2 calculate 58,000 but whatever.

3 We believe that this architect could easily make
4 minor modifications that could add some or all this reduced
5 space. However, this building is now planned for almost 1.4
6 million square feet, 65,000 square feet is a very small portion
7 given the large beneficial impact that this small additional
8 setback would have on the residential committee, we urge that
9 the 64-foot setback, 34 feet from the property line, be
10 required. And that serious consideration be given for the
11 security reasons that Dru raised, for adding setback along the F
12 Street facade as well.

13 Building this building to the property line would
14 not only be a mistake, as the Chairwoman suggested last week, it
15 would be an important mistake and a very highly visible mistake.

16 Please don't let them do it. Thank you.

17 CHAIRPERSON MITTEN: Thank you, Mr. McMillion and
18 Mr. Tallant and Mr. Edwards. Questions from the Commission?
19 They have questions, they're just getting ready.

20 COMMISSIONER PARSONS: Well I wanted to talk a
21 little bit about parking because I don't understand. You're
22 concerned with an existing parking lot that's going to be
23 removed, that this will have an adverse impact on the community.

24 But you, unless I missed it, offer no solution to that. Or
25 have I missed your point entirely?

1 MR. McMILLION: There's not a good solution to it
2 obviously. When Thurgood Marshall was built, the Senate staff
3 had, I think it was 200 parking spaces in Thurgood Marshall and
4 they were allowed to keep that because they were parking in what
5 was then a parking lot for Thurgood Marshall.

6 That's not the case with the Thurgood Marshall
7 workers who now have about 150 employees and about 70 vendors
8 and other people who come everyday that park in this lot.

9 There's no good solution and, as the woman, the
10 Administrator from Thurgood Marshall told you last week, there
11 really are no easy alternatives.

12 There is no day parking available at this time in
13 Union Station or anywhere else around. So it's going to be a
14 problem. But, you know, with any benefit you expect to get some
15 problems.

16 The only solution that we can propose, I mean we
17 need to recognize that there is a cost to the community of this.

18 We've got a lot of small businesses that just don't have any
19 place else for their people to park and it's going to be a
20 problem.

21 But one of the solutions is to make very sure
22 that at least the metered parking that we have is retained.
23 We've got 38 metered parking spaces on 2nd Street between F and
24 the H Street overpass. And probably 40 or a little bit more on
25 the east side.

1 And then we've got, and I didn't count those, but
2 we have a number going up between Union Station and 2nd Street.

3 So, you know, at least for the vendors who come short time,
4 that would be a real help.

5 But I just wanted to call your attention, I think
6 we all did, wanted to call your attention this is a really
7 serious problem in a neighborhood where parking is already a big
8 problem.

9 COMMISSIONER PARSONS: Well do you have a two-
10 hour restriction in the neighborhood except for residents?

11 MR. McMILLION: We do.

12 COMMISSIONER PARSONS: So there's nothing you
13 would ask us to do? Not that we can do anything about parking.

14 It's just pointing out to us that this is an adverse impact?
15 You're not suggesting that spaces be provided in the building
16 for the community?

17 MR. McMILLION: Well, we would like for spaces to
18 be -- I'm not sure if you want to go there.

19 COMMISSIONER PARSONS: No I don't.

20 MR. McMILLION: There are so many issues that
21 we've just had to let go.

22 COMMISSIONER PARSONS: Okay.

23 MR. McMILLION: But that is one of the things
24 that early on was one of our requests. It's one of the things
25 that early on was one of the strong requests of Thurgood

1 Marshall administration.

2 And obviously we would love to see it if you are
3 willing to require it. But we would like to keep that metered
4 parking.

5 COMMISSIONER PARSONS: Okay. Nobody else asking?
6 I'll ask another one.

7 CHAIRPERSON MITTEN: Okay, sure. Go ahead.

8 COMMISSIONER PARSONS: What is it about the
9 Thurgood Marshall Building setback at 34 feet that pleases the
10 community or isn't that the right word. I mean was that
11 negotiated out during the discussions on Marshall at that
12 setback or is it simply a product of getting into a parking
13 garage?

14 MR. TALLANT: No, I don't think it's a matter of
15 getting into a parking garage. I wasn't living on Capitol Hill
16 when that building was designed and built so, you know, I don't
17 have that kind of knowledge.

18 But I believe it's the case that when the
19 Architect at the Capitol, and perhaps Mr. May has some
20 experience with this, was designing that building, that they
21 indicated that a significantly greater setback, such as like
22 exists at the Hart Office Building, is also set back a great
23 distance from 2nd Street.

24 And the Thurgood Marshall Building is set back a
25 great distance. And on the Architect of the Capitol's plans for

1 this site, they also showed a building, it was just a proposed
2 building, indicating a greater setback along 2nd Street, the
3 rationale being that in order to accomplish an appropriate
4 transition between the higher density 7-, 8-, 10-story buildings
5 of the government office buildings to the very low scale
6 residential neighborhood to the east, that there needed to be
7 some breathing space along the street.

8 I think if you look at some of the office
9 buildings, I don't know if Nancy Metzger is here. She has done
10 that analysis. That there are a couple of buildings where these
11 large office buildings were place right on the property line,
12 directly across the street from residential scale neighborhoods.
13 And the juxtaposition is quit jarring.

14 COMMISSIONER PARSONS: So what if the setback
15 that you're suggesting resulted in a partial infill of the
16 courtyards. Would that be objectionable? Your alternative is
17 to raise the building on the west side. But there are other --

18 MR. TALLANT: Well, we believe it is imminently
19 feasible to cantilever a portion of the building over the 63
20 foot, I believe it is, width of the driveways that are feeding
21 the loading docks.

22 In the driveway off of 8th Street, there's a very
23 wide, on the west side of the building between the west property
24 line and the face of the building, there are several lanes of
25 traffic and truck traffic to access Union Station.

1 We believe certainly that the upper floors it
2 should be feasible to cantilever the building over that
3 driveway, perhaps even creating a more interesting facade on the
4 west elevation and thereby recoup a great deal of the space that
5 would potentially be lost from bringing the building back along
6 2nd Street.

7 COMMISSIONER PARSONS: Okay, thank you.

8 MR. TALLANT: Now, you know, whether the setback
9 ends up exactly the same as Thurgood Marshall or something less,
10 I mean that's a hypothetical, you know, until we reach that
11 point.

12 But the point is that the face of the building on
13 the property line, a mere 30 feet from the curb, where between
14 the curb and the face of the building, there are automobile lay-
15 bys, there are some tree boxes, there's the Metropolitan Branch
16 Bicycle Trail, there's a pedestrian walkway and there's a small
17 amount of landscaping for some vines. I mean that's an awful
18 lot to try to get in in the 30 feet of width.

19 COMMISSIONER PARSONS: Okay.

20 MR. TALLANT: So we would like to see that
21 increased.

22 MR. McMILLION: Could I introduce Nancy Metzger
23 who chaired our Historic Context Team and who can take a little
24 bit more directly to the 64-foot setback.

25 MS. METZGER: My name is Nancy Metzger. And you

1 have this, I think, in your, the set. But this is part of the
2 Architect of the Capitol, the 1981 Master Plan.

3 CHAIRPERSON MITTEN: Yes.

4 MS. METZGER: And it does show not only is it the
5 Thurgood Marshall Building --

6 CHAIRPERSON MITTEN: We want to make sure we keep
7 you on the mic.

8 MS. METZGER: Yes.

9 CHAIRPERSON MITTEN: I have a hand held. But we
10 have this in our materials.

11 MS. METZGER: You have that. Not only is the
12 Thurgood Marshall Building set back, but all of the buildings
13 along 2nd Street, the Hart Office Building, they're all set back
14 an equivalent so that, for instance, that block opposite the
15 Hart Office Building where there are small houses, they're not
16 towering over it.

17 On 3rd Street, where the Adams Library is across
18 from the church and the other houses, that is set back, even
19 the Folger Library Building is set back. Those were all done in
20 the 1930's.

21 This is a long-standing concept that has been
22 used on Capitol Hill as that transition. And there's the
23 picture there of the Madison Building where in the back of it,
24 on C Street, it is not set back. It is right on the property
25 line.

1 And those of you who have walked back there
2 realize how much of a looming presence that building is when
3 it's set right at the property line.

4 CHAIRPERSON MITTEN: Thank you. Anything else?
5 Any other Commissioner? Mr. May?

6 COMMISSIONER MAY: Yes, I have a question
7 regarding the Arbitration Panel that's being proposed. Explain
8 to me how you think that might actually work. Because it seems
9 to me that it has the potential to get awfully messy if it were
10 even feasible at all.

11 MR. McMILLION: Let me introduce Brian Furness
12 who chaired our team on traffic, parking, and construction
13 management.

14 MR. FURNESS: Thank you, Madam Chairman, it's a
15 pleasure to be here this evening to work with Charles who, with
16 the rest of the team, to address the questions that you may have
17 in this respect. We chaired --

18 CHAIRPERSON MITTEN: Just state your name for the
19 record when you --

20 MR. FURNESS: Pardon?

21 CHAIRPERSON MITTEN: Just state your name for the
22 record as you begin.

23 MR. FURNESS: My name is Brian Furness. I live
24 at 1367 Massachusetts Avenue, S.E., and I've lived on Capitol
25 Hill since 1969.

1 CHAIRPERSON MITTEN: Thank you.

2 MR. FURNESS: I'm the Chair of the Restoration
3 Society's Community Development Committee and the past President
4 of the Society.

5 In the submission that we made to the Zoning
6 Commission with respect to Construction Management, we did
7 propose that this Commission order the Applicant to agree to A)
8 an impartial body that would serve essentially as a referee
9 between those who might feel that they had some kind of damage
10 and the Applicant and/or the construction company.

11 CHAIRPERSON MITTEN: I think Mr. May's looking
12 for a little more detail about actually how that would function.

13 MR. FURNESS: What we, yes, what we had proposed
14 was that it could be the -- it would function, at least
15 initially, in the fashion of an arbitration proceeding. And we
16 suggested that the American Arbitration Association or some
17 other body that's equally agreeable to the community and to the
18 Applicant be selected essentially to provide, to work as a
19 referee.

20 They would hear allegations of potential damage
21 caused by the construction activities and would render a
22 decision, hopefully within, we proposed 60 days from
23 notification to documentation of the condition.

24 COMMISSIONER MAY: Are there examples of this
25 sort of a system being set up on a construction project to deal

1 with the concerns of the neighborhood around it?

2 MR. FURNESS: I have no personal knowledge of
3 situations in which this has been a -- this kind of a solution
4 has been proposed.

5 COMMISSIONER MAY: Okay.

6 MR. FURNESS: But it strikes me that it ought to
7 be feasible and perhaps this could be a test case if there are
8 no particular cases available.

9 COMMISSIONER MAY: Okay. I have a question with
10 regard to the setback condition. I think I understand very well
11 the issue with how far the building -- how far back you'd like
12 the building and I'm certainly familiar with the Architect of
13 the Capitol's Master Plan and the extent to which it goes into
14 that area which is not terribly far.

15 But the -- I guess -- I'm looking at this
16 proposition that portions of the first building -- I guess the
17 first two portions that have not been set back. And if that --
18 the idea is that if you move that back only 34 feet, you're only
19 going to cost only 65,000 square feet of building.

20 And how much square footage was lost when they
21 moved the third building portion back? Or how much had to be
22 moved, as I understand it, there was no actual loss of square
23 footage. So it theoretically would have been half that, right?

24 It would have been 32,000 square feet, something like that?

25 MR. TALLANT: I'll have to do the calculation

1 quickly in my head. I believe that that portion of the building
2 is about 200 feet long and they set it back 20 feet, so it would
3 be 4,000 feet per floor, over 8 floors. So 8 times 4,000, I
4 guess 32,000 square feet.

5 Now I don't know whether there was a net loss in
6 the size of the building or whether or not they, you know,
7 recouped it somewhere else.

8 COMMISSIONER MAY: Yes, my recollection is that
9 it was found somewhere else. The, when it comes to, you know,
10 doing this sort of pushing and pulling with the design itself,
11 it seems to me that to some extent that in this particular case,
12 we're trying not to or I guess what's happening to the design is
13 that it's being down from being a single large building with a
14 single line. That the mass of it is being broken down.

15 What if, for example, the Developer would propose
16 that the building at the -- the projection at the corner at F
17 Street be the one that be set back further. And that the one
18 that they had moved back came forward again?

19 The reason I suggest that is that that's the one
20 that's actually facing buildings that are only 25-30 feet tall.

21 And the other portions are facing parking lot which,
22 presumably, is going to be developed C-2-A, so it's going to be
23 50-feet tall buildings.

24 MR. TALLANT: My personal opinion, we haven't
25 discussed that possibility in our committees, but my own

1 reaction is that the most important corner for this building is
2 the corner of 2nd and F. That that's the corner that has the
3 greatest pedestrian traffic, the greatest visibility.

4 As you get down closer to H Street, there's
5 significantly less pedestrian traffic. The building is
6 eclipsing the view of the H Street Bridge so it's, you know, six
7 of one, half a dozen of another. If you pull the building back
8 at H Street, you simply improve the view of the H Street
9 overpass. So we've not going to go to the mat --

10 COMMISSIONER MAY: Right.

11 MR. TALLANT: -- Saying that we want that
12 building pushed back. However, the corner of 2nd and F we
13 believe is the most important corner in making this building
14 acceptable. Certainly the fact that the middle building, the
15 portion just south of G Street, is pulled back helps. But we
16 don't believe that that is as critical as the corner of 2nd and
17 F.

18 COMMISSIONER MAY: Okay. I probably am not --
19 there are probably others who I could ask this question of more
20 efficiently but the other houses that are on 2nd Street
21 directly, that are facing 2nd Street, which are I believe it's
22 largely commercial --

23 MR. TALLANT: The ones closest to F or between G
24 and H?

25 COMMISSIONER MAY: Yes, closest to F.

1 MR. TALLANT: Closest to F.

2 COMMISSIONER MAY: There's that one short row.

3 MR. TALLANT: Yes.

4 COMMISSIONER MAY: What is the likely fate of
5 those buildings in the long term? I mean is it likely that
6 they're going to wind up being developed into something else?

7 MR. TALLANT: All but one of them, I believe, are
8 commercially used right now. The middle building in that row is
9 in the process of being renovated, rather expensively I might
10 add, with a large addition on the back for a veterinary clinic.

11 COMMISSIONER MAY: Yes.

12 MR. TALLANT: Two of the other buildings in that
13 row have had substantial interior renovations. The building on
14 the corner was renovated into a restaurant three to four years
15 ago. So there is significant capital investments in those
16 buildings.

17 I believe there's only one that has not been
18 substantially rehabbed in the seven years that I've lived in
19 this neighborhood.

20 So over the very long term, sure, I suppose it's
21 possible that these buildings would be coming down because they
22 are zoned C-2-A which would allow a somewhat greater density.

23 In the intermediate term, I don't see that
24 happening for quite some number of years, perhaps several
25 decades because of the significant investments that have already

1 been made in those properties.

2 MR. McMILLION: Could I say also that it's one of
3 the concerns that we have with this Building 1 being built right
4 to the property line is that it would then loom so prominently
5 over these 25, actually not even 25 because they're sunk a
6 little bit, 25-foot townhouses.

7 One of our concerns is that that will add
8 significantly to the instability of that half block and could
9 lead to those historic, I mean it's not in the Historic
10 District, but those very old townhouses being demolished sooner
11 than later. And for us, it is one more reason why Building 1
12 needs to be back off the property line.

13 COMMISSIONER MAY: Interesting. Back to the
14 desire for a broader survey of properties that are in the
15 adjacent area. As I understand it, the 200-foot limit that had
16 been proposed by the Developer was actually based on some sort
17 of calculation of the affect of the ground water, or the de-
18 watering that would be involved on the site.

19 Is there a similar calculation or scientific
20 basis for what you would propose in terms of the more expanded
21 survey?

22 MR. McMILLION: Our concern is that the
23 calculation, as I mentioned earlier, was done only on the site
24 and it's only an average of other downtown buildings and other
25 suburban buildings in other locations. This location ,built in

1 Swamp Poodle, is not your average location. Our houses, 100,
2 115 years old, are not average houses.

3 Because of Reedy Creek which, we're supposed to
4 have a map of that but we've got one someplace, because of Reedy
5 Creek, thank you, Reedy Creek that runs through the area, these
6 houses were built light and they were built on landfill. And
7 the water table is quite high there.

8 We've already had experience soon after Thurgood
9 Marshall and during the time that Thurgood Marshall was being
10 built, you know we didn't know from water tables and so it
11 wasn't something that we were watching carefully.

12 But a couple of years after Thurgood Marshall was
13 built, the District illegally, because there is a weight limit
14 for vehicles on our street, but rerouted 260 buses a day down
15 our street.

16 It did enormous damage, tore up virtually every
17 roof, they either had to be completely repaired or significantly
18 repaired. We had one resident who is with us tonight whose
19 facade that is shown here literally separated from the rest of
20 the house.

21 We had our own engineers do the vibration tests.

22 We had -- and there was a real problem because those
23 vibrations, while significant, should not have been causing that
24 much damage to these houses.

25 So we don't know for sure, but we are concerned

1 that during Thurgood Marshall one of the factors that led to the
2 structural fragility of our neighborhood was that that water
3 table was lowered dramatically and then raised back up again and
4 that our houses settled when vehicles came by.

5 CHAIRPERSON MITTEN: Getting to Mr. May's point
6 though about, you know, the sort of the broader scope, is there
7 evidence from your experience with the Thurgood Marshall
8 construction and then the buses that -- I mean was all the
9 damage on the street where the buses were actually going? Or
10 was it two blocks away? Or is there evidence that can guide us
11 about how likely it is that there's going to be this expanded
12 impact?

13 MR. McMILLION: There was very significant damage
14 certainly in the first two blocks of F Street, that is the 200
15 and the 300 block of F Street on both sides of the street.
16 There was some damage on E Street and some damage, I understand,
17 on G Street.

18 But on F Street, which is where the buses were,
19 the damages was really quite severe. And we don't know
20 precisely how far the radius should be. But we know that
21 there's nothing about our neighborhood that resembles downtown
22 development.

23 Even though this is on the edge of the Central
24 Employment Zone. We understand that. But our neighborhood is
25 quite unique. And for the minimal cost to do the survey before

1 construction begins, we would think that it would be both a
2 safeguard for the Developer as well as for us.

3 Obviously it's going to be very difficult for us
4 to come back later with claims for damage if there's not a
5 survey done before the construction begins.

6 MR. TALLANT: If I could add also, in addition to
7 the water table issue, there will be pile driving activities in
8 association with the construction of the foundation. That is
9 another source of vibration in addition to the trucks if they're
10 not routed rigorously down 2nd Street the way the Developer is
11 proposing.

12 So there are myriad concerns. The ground water,
13 the trucks, the pile driving, things like that.

14 CHAIRPERSON MITTEN: Thank you. Anything else,
15 Mr. May?

16 (No response.)

17 CHAIRPERSON MITTEN: Anyone else? Mr. Hood?

18 COMMISSIONER HANNAHAM: Madam Chair, I just have
19 -- this is sort of a follow up to this general area. I was just
20 wondering whether in your report you indicate that you gave
21 information -- the report from the experts, the environmental
22 engineer.

23 You gave those reports to us to look to at. And
24 also to District agencies. Have you gotten anything from the
25 District agencies? Or have you received anything from them in

1 terms of advisories with regard to all this.

2 Because there's a considerable amount of effort
3 underway for the past decade in the District, earlier under DCRA
4 and currently under the Department of Health as, you know, water
5 resources, experts on all of the disciplines.

6 I just wondered whether you have actually tapped
7 their brains, you know, and tapped their data bases for what
8 might possibly be relevant to what these concerns you've just
9 expressed.

10 MR. McMILLION: We have nothing from the
11 District. We have spoken with someone in virtually every
12 Agency. But staffing is very thin and, you know, we've been
13 shocked I guess is perhaps the appropriate word, that a building
14 of this size would not require an Environmental Impact Study,
15 would have, at this point, virtually no environmental oversight.

16 And, as the representative from the Department of
17 Transportation said on Friday night, we still don't have a
18 construction management and a traffic plan from the Developer.
19 For a site which we calculated just to get the dirt out of and,
20 you know this -- but our calculation was that just to get the
21 dirt out of this site for their parking would require 10,000
22 fully loaded dump trucks. That's 10,000 in and 10,000 out.

23 This is a very large project. We have proposed
24 that they approach CSX or the railroad and takes these things
25 out by rail but that hasn't worked out. So it's a difficult

1 project. We've tried to find city agencies that had the
2 expertise to be responsive. But so far, we haven't had a lot of
3 luck.

4 COMMISSIONER HANNAHAM: Okay. Okay, thank you.

5 CHAIRPERSON MITTEN: Anything else Commissioner
6 Hannaham?

7 COMMISSIONER HANNAHAM: Just a thought. I know
8 that the last time we met, we had people from the immediate
9 neighborhood who were directly impacted who had put together
10 petitions. And they seemed pretty much unanimous in favor of
11 this particular PUD. I wonder what thoughts you might about --
12 maybe some of these people were involved in some of the task
13 groups. I don't know. But what is your view then, given the
14 fact that these people are directly impacted?

15 MR. TALLANT: Sure, certainly many of those
16 people are my friends and neighbors.

17 COMMISSIONER HANNAHAM: Right.

18 MR. TALLANT: There is a desperation to see this
19 site developed. And I think that many people are willing to
20 overlook the potential problems in exchange to get a building
21 put on this site. We are all tired of looking at this very
22 unsightly parking lot. I mean none of us here wants to see this
23 project go away.

24 Our position is that it's perfectly reasonable to
25 believe that we support the project but have problems with the

1 design. There are people in the neighborhood who want the
2 project so badly, they don't want to hear about potential
3 problems with the design.

4 That's essentially the difference of opinion.

5 COMMISSIONER HANNAHAM: Okay. Thanks.

6 MR. McMILLION: And if I could add, I think that,
7 well in fact, you didn't hear from anyone last week, I'm pretty
8 sure this is true, you didn't hear from anyone last week who
9 lived in that area when either Thurgood Marshall was being built
10 or the buses were going down F Street.

11 So, you know, part of this is just sad experience
12 on our part. We've been through this before. We're eager for
13 the building. You know, we're not opposing the building.

14 We're opposing the limitations that they've up on
15 surveying houses and we're opposed to building that Building One
16 right to the property line. And then a few other things, but
17 relatively minor.

18 COMMISSIONER HANNAHAM: Okay. Thanks.

19 CHAIRPERSON MITTEN: Thank you. Mr. Hood?

20 COMMISSIONER HOOD: Madam Chair, I believe my
21 question was just asked on my colleague's question to the panel
22 but I wanted as opposed now as asking a question, I want to put
23 it into my own assessment of what I've read and what I'm hearing
24 here tonight.

25 I believe from Mr. McMillion and Mr. Tallant what

1 I'm hearing is that, like you said, you're not opposed to the
2 project. You just have maybe some cosmetic issues, some
3 enforcement issues and there's some needs for more negotiations.

4 Is that what I'm hearing?

5 MR. TALLANT: Particularly with regard to the
6 setback, yes.

7 COMMISSIONER HOOD: Okay.

8 MR. TALLANT: We had put that before the
9 Developer very early on in the design of this project, both for
10 aesthetic reasons and for security reasons.

11 And, you know, one of the statements which I
12 believe was the person representing the SEC last week which we
13 were rather dumbfounded was she said that she didn't think that
14 the planters that they put out in front of buildings to keep
15 truck bombs from running into them do any good. Which left us
16 rather puzzled to wonder why then they're popping up all over
17 town.

18 I think that the security issue and the failure
19 to include those security issues as part of the design of this
20 building is a very, very serious consideration. And I would
21 hope that you will take that under advisement before you render
22 a decision.

23 I think that it would be a tragic mistake for the
24 District government to be in the embarrassing position of having
25 Jersey barriers put up in front of a brand new building. I mean

1 that's -- you know, it just boggles my mind to think that might
2 be where we go.

3 The alternative is that the Developer's claim
4 that any security devices would have to be reviewed by the CFA.

5 However, regardless, at this point, any security barriers would
6 have to be in the public space.

7 And I can't quite figure out how a private
8 Developer believes that they have the right to use public space
9 in order to meet the needs of their client. I just don't
10 believe that that's an appropriate position.

11 COMMISSIONER HOOD: I saw that in your testimony,
12 Mr. Tallant.

13 MR. TALLANT: Thank you.

14 COMMISSIONER HOOD: My next question is the
15 parking issue. Mr. McMillion, I believe in your testimony
16 tonight you stated that the parking may overspill into the
17 neighborhood. That's a possibility.

18 But also I know another circumstance in this
19 city, the Ronald Reagan Building. There's no parking there
20 either so the folks, and this is actual facts, the folks, as
21 opposed to finding alternative parking, they went to the other
22 measures of taking the Metro. Some folks who have never driven
23 for 25 and 30 years, now have been forced to the Metro.

24 So on this site, if I say to you or whoever is
25 going to answer that question, do you see the possibility of the

1 tenants being forced to use Union Station Metro as opposed to
2 what's going on at the Ronald Reagan Building, what would you
3 respond? Or rather, what is your analysis? I know that's a
4 hypothetical, but what would you think would happen?

5 MR. FURNESS: It is, indeed, hypothetical. But
6 we would note that the Applicant has filed the Traffic
7 Management Plan which provides for a number of incentives for
8 using public transportation, in any case, for alternatives to
9 the use of single-occupancy vehicles.

10 They set a model split target of 75 percent,
11 which is very ambitious, but we think is entirely justified by
12 the particular advantages of this site. We would hope that this
13 Commission would mandate, as it did back in -- as the BZA did
14 back in 1990, that the Traffic Management Plan, forwarded by the
15 Applicant, be adopted.

16 And we would hope, too, that it be binding on the
17 tenants, including the SEC which, as you'll recall at the
18 previous testimony, did not directly answer your question about
19 whether they would agree to be bound by the Traffic Management
20 Plan.

21 With respect to the parking, yes, the residential
22 neighborhood is protected by the residential permit parking
23 regime. However, as we all know, enforcement is not what it
24 could be.

25 And you will note that in our submission, in

1 addition to requiring the Applicant to maintain the existing
2 street parking, that is the metered parking along 2nd Street and
3 along F Street, we have also asked that the Applicant -- that if
4 it should prove necessary, that the Applicant provide personnel
5 or other support for the enforcement of the residential permit
6 parking requirements in order to protect the neighborhood.

7 COMMISSIONER HOOD: Okay, thank you.

8 I have a request. This was done before by a
9 former colleague of ours, Commissioner Franklin. There were
10 some opponents who came down and had certain issues that they
11 wanted to see tweaked.

12 I would like for you to put it just on a sheet or
13 two sheets or three sheets, or whatever they are. A sound byte.

14 Something similar to Mr. McMillion's testimony where you have
15 it here.

16 You have the outline the way you have it and the
17 issue right there. So I can -- I mean that would help me out
18 personally. I don't know about my other colleagues. As opposed
19 to me having to search and find.

20 I would like to have it all on one sheet and I
21 don't want to have to put you through any more work but that
22 would help us to be able to help how we're going to deliberate -
23 - me deliberate and deal with your issues in your case as we
24 proceed. So if I can get that from you, that would really help
25 me out. Thank you. No further questions.

1 CHAIRPERSON MITTEN: Thank you. I'd like to
2 follow up on this notion about the setback and I just want you
3 to address the issue of matter of right development which would
4 come under the scrutiny of the Commission of Fine Arts but not
5 come before the Zoning Commission.

6 It's likely it would go before the BZA for a
7 parking variance again. But already the Commission of Fine Arts
8 has not expressed any concern about set back. They did not
9 focus on that as a design problem.

10 So I guess what I'd like you to focus on and give
11 me your thoughts is -- there's only so far you're going to be
12 able to push or that we are going to be able to push this
13 Applicant until they decide the PUD doesn't make sense. We'll
14 just go with matter of right.

15 So have you thought about what you could end up
16 with with a matter of right project?

17 MR. TALLANT: I believe that the key there is in
18 the first part of your question which is that any building, even
19 a matter of right building, still have to reviewed by the
20 Commission of Fine Arts.

21 The Commission of Fine Arts reviewed this project
22 I believe on three occasions. The first hearing, they were
23 extremely critical.

24 You probably are aware that the Architect, Kevin
25 Roche, and the Chairman of the Fine Arts Commission are very

1 good friends. I don't know whether that played any role in the
2 selection of the architect or any role in their consideration.

3 We were --

4 CHAIRPERSON MITTEN: Well, just focus on the --
5 the Commission of Fine Arts has made a decision. And how they
6 made it is really not -- we can speculate about the reasons for
7 it but we have them on record as not seeking to impose a
8 setback.

9 MR. TALLANT: True.

10 CHAIRPERSON MITTEN: Which -- let's extrapolate
11 and say there's no reason to assume that on a matter of right
12 project they would impose a setback. So how does that make you
13 feel knowing that you're clearly pushing the Applicant with your
14 requests?

15 MR. TALLANT: Yes.

16 CHAIRPERSON MITTEN: I mean they have a tenant in
17 hand that they need to please. And clearly, as it was
18 articulated to us, the design is very much about satisfying the
19 needs of a government tenant as opposed to a private sector
20 tenant.

21 MR. TALLANT: Yes.

22 CHAIRPERSON MITTEN: And the configuration of the
23 building and its orientation relative to the core and all of
24 that. So, you know, let's just assume that CFA is not going to
25 require a setback for a matter of right project. Then, you

1 know, how do you feel about how far you're trying to push the
2 Applicant?

3 MR. TALLANT: With a great deal of anxiety. I
4 mean I think that we're all very concerned about what this
5 building will look like. And the fact that it could be worse,
6 which I believe was predominantly the Office of Planning's
7 analysis which is, you know, yes, it's not an ideal building but
8 it could be worse.

9 CHAIRPERSON MITTEN: Yes.

10 MR. TALLANT: Well, I, with no apology, feel that
11 the threat that a building could be worse isn't a good enough
12 reason to accept something less than I think this neighborhood
13 and this site deserves.

14 And, you know, I suppose it's conceivable that
15 the Developer might come back with a building that is a matter
16 of right building that is even more objectionable. I don't know
17 that that's going to be the case.

18 There was a building designed on this site, I
19 believe, about 11 years ago. And in some ways, that building
20 was more interesting even though it, too, was built very close
21 to the street. It was much more richly designed than this
22 building is.

23 CHAIRPERSON MITTEN: Okay.

24 MR. EDWARDS: Can I be heard on this point? I
25 think the starting point is let's look at what we're getting

1 from a PUD versus what you're getting as a matter of right.

2 And as the Office of Planning has quantified and
3 as Drury has explained, they are getting an additional 25 feet
4 of height over what they would get as a matter of right, 200,000
5 square feet.

6 And I think that is what we have to look at when
7 we say are we going to require them to setback the corner of 2nd
8 and F and give up, perhaps, 30,000 or 60,000 square feet?

9 We have to weigh that against the 200,000 square
10 feet that they are getting in the additional 25 feet of height
11 because the building, as a matter of right, would have been
12 measured from F Street. It would have been 90 feet tall. The
13 building as measured from F Street now is 115 feet tall.

14 CHAIRPERSON MITTEN: And, you know, and I think
15 in most other circumstances, that would be exactly what we're
16 weighing. But in this case, and I don't know that the answer
17 could be -- I don't know that the question could be answered
18 definitively or would be definitively answered.

19 But there's a tenant that is driving this. You
20 know, they would just be another Developer with a bright idea
21 except for the SEC. And the SEC is part of the package. And
22 the design is responsive to the SEC.

23 So you start pushing the design too far and then
24 the next thing you know, the SEC goes to their second choice.
25 So that is bound up in this conversation that we're having.

1 MR. EDWARDS: And that conversation, I think,
2 says that the SEC has signed a lease for 670,000 square feet.
3 The building that you're looking at right there is 1.4 million
4 square feet.

5 CHAIRPERSON MITTEN: Yes.

6 MR. EDWARDS: I think there is some room where
7 the tenant is driving it only to about half of what is being
8 proposed here.

9 CHAIRPERSON MITTEN: Okay. Let me ask you a
10 question about the other side of that board and C Street and the
11 Madison Building.

12 Can you tell us -- I don't know if you know or
13 not -- but can you tell us the width of C Street?

14 MS. METZGER: It is approximately the same as 2nd
15 Street. It is one of the narrower streets. I did not measure
16 it.

17 CHAIRPERSON MITTEN: I think if we could get that
18 for the record, that would be helpful because my recollection is
19 that the width of 2nd Street is 100 feet, is that correct?

20 MS. METZGER: It's -- when you're saying the
21 width of 2nd Street, it's only 33 feet in the street.

22 CHAIRPERSON MITTEN: Well there's the right of
23 way. The right of way is --

24 MS. METZGER: 30 feet between the curb and the
25 property line approximately on both sides. So it's

1 approximately 90 to 100 feet --

2 MR. EDWARDS: From building to building.

3 MS. METZGER: From building face -- from property
4 line to property line.

5 CHAIRPERSON MITTEN: Well I think what would be
6 helpful for us if you could put the information together is the
7 right-of-way -- the width of the right-of-way of 2nd Street
8 relative to the width of the right-of-way of C Street and then
9 these other breakdowns that you'd like to make with the actual
10 road bed and maybe the width of the sidewalk and then from the
11 sidewalk to the front of the building and all of that.

12 But that would allow us to make a more direct
13 comparison with your example on C Street --

14 MS. METZGER: Okay.

15 CHAIRPERSON MITTEN: -- Which would be helpful.
16 Can you comment on the phasing of the project and -- you know,
17 we heard some concerns last Thursday about issues related to
18 timing of, you know, the project overall.

19 But also the idea that we might not ever get to
20 Building 2 or Building 3. Do you have concerns about that? And
21 if so, what are they?

22 MR. EDWARDS: Let me try to take that to start
23 with. A very important part of my view of this building is
24 integrating it into the neighborhood and making it a good
25 neighbor. And part of that is that the people who work in this

1 building has access to the neighborhood. And the neighborhood
2 to me is H Street, it's 2nd Street commercial.

3 It's not necessarily Union Station. They're
4 going to have the connection into Union Station. But what
5 they're proposing to accomplish this integration with the
6 neighborhood is that when they build the third phase, they will,
7 at the H Street overpass, have an entry that will allow the
8 employees to walk out onto H Street.

9 Our concern is when will that happen? When will
10 that integration occur? And wouldn't it be better, as Drury
11 Tallant suggested, to use the 15-foot wide, which is known as a
12 maintenance easement, south of the H Street overpass, where
13 nothing can be built, develop that into a pedestrian walkway and
14 you have integrated at ground level all of 2nd Street with H
15 Street.

16 You have allowed people in the first part of the
17 building to walk out on 2nd Street, walk north, use that walkway
18 and have access to H Street.

19 CHAIRPERSON MITTEN: Is this something that you
20 have had conversations with the Applicant about?

21 MR. EDWARDS: We have. Unfortunately, the
22 construction easement is owned by, I believe it's, Potomac?
23 Potomac Properties owns that parking lot and they are not
24 interested in selling enough to the Developer to make that
25 happen at this time.

1 CHAIRPERSON MITTEN: Okay.

2 MR. McMILLION: Could I speak more directly to
3 the phasing issue? Actually one of the questions that came up
4 last week, and I thought it would be taken care of in
5 preliminary business today and maybe it can be now was the time
6 frame for the SEC's option, if you'll recall.

7 CHAIRPERSON MITTEN: Right.

8 MR. McMILLION: Do you know what that time frame
9 is?

10 CHAIRPERSON MITTEN: No, we're going to get an
11 additional submission. We didn't necessarily ask that all the
12 submissions be in by this evening.

13 MR. McMILLION: Okay. The only thing that we
14 have now, and again we've done, you know, with 60 people we've
15 done fairly rigorous research. But the only thing we've been
16 able to get is the solicitation that initially went out from the
17 SEC for this property.

18 And in the solicitation, they required options
19 for an additional 250 square feet of space beyond the 650,000
20 that they wanted to lease, an additional 250,000, 125,000 of
21 which would be the option would be exercisable in 2010. The
22 other 125,000 in 2015.

23 So it has raised considerable concern for us and
24 I can say for me personally because of where I live, I have
25 spent -- we haven't been able to come before this body on this

1 issue -- but a great deal of time over the last 14 years trying
2 to get development at 201 F Street, N.E.

3 But the owner of that property pays very little
4 taxes, has no interest in developing it or selling it and is
5 sitting on an incredible eyesore. We may have some pictures
6 around someplace that I can show you or hope you are familiar
7 with.

8 CHAIRPERSON MITTEN: Well let's stay focused on
9 Station Place.

10 MR. McMILLION: Well, but we are concerned about
11 just how long the Louis Dreyfus firm might just sit on this
12 wonderful asset, particularly if they get PUD approval that's
13 open ended for any number of years.

14 Now the only building that is being built, the
15 only thing really that you're, you know, directly faced with
16 right now is 650,000 square feet for the SEC.

17 This other building, we don't know. And we've
18 gotten several different stories. And maybe if you'll ask them,
19 you can nail it down tonight. But it's a real concern.

20 Because if the second building isn't built, then
21 I guess it's conceivable that the third building could be built.

22 But if the third building is built, how are they going to
23 manage the construction of the second building. You know, where
24 are the trucks going to come in and go out. Are they going to
25 come in and go out the ramp? I mean, it's a question.

1 CHAIRPERSON MITTEN: Right.

2 MR. McMILLION: So, phasing is a real concern and
3 we are concerned. We're eager to get development. But we'd
4 like to get development -- appropriate development and we'd like
5 to get it quickly and we don't know when that might be.

6 CHAIRPERSON MITTEN: Okay.

7 MR. TALLANT: If I could also add. Since we are
8 likely to be looking at a surface parking lot on the north
9 portion of this property where Buildings 2 and 3 would go, I
10 believe that considerable attention should be paid to what the
11 aesthetics of that parking lot will be.

12 Right now, I believe they're proposing a plywood
13 fence or something. I believe that's the construction fence but
14 there's no indication --

15 CHAIRPERSON MITTEN: Well they've made additional
16 submissions about what that would look like and it's better that
17 what you're describing.

18 MR. TALLANT: Okay.

19 CHAIRPERSON MITTEN: Hopefully you'll have copies
20 of those.

21 MR. TALLANT: Okay, thank you.

22 CHAIRPERSON MITTEN: But we share your concern.

23 All right, any other questions from the
24 Commission before we go to cross examination? Mr. Quin? Oh
25 sure.

1 MR. QUIN: Thank you. Can you hear?

2 CHAIRPERSON MITTEN: Yes.

3 MR. QUIN: Just three quick questions for the
4 record. I just want to make certain that --

5 CHAIRPERSON MITTEN: Oh, the Reporter's not
6 picking you up. It doesn't work for him.

7 MR. QUIN: Okay.

8 CHAIRPERSON MITTEN: May you could just kind of
9 squeeze in at the end.

10 MR. TALLANT: No, it's that mic in the center
11 that they're interested in.

12 MR. QUIN: I just want to confirm -- can you hear
13 me all right now?

14 CHAIRPERSON MITTEN: No, he needs you on one of
15 the regular ones. I'm sorry.

16 MR. QUIN: Okay, great. Just to -- pardon me?
17 You're welcome.

18 Mr. Furness, just want to confirm that on October
19 the 15th we hand-delivered to you elements of the Construction
20 Management Plan and the TMP.

21 MR. FURNESS: You did.

22 MR. QUIN: Thank you.

23 MR. FURNESS: And it was labeled draft and
24 Elements of this Construction Plan may include the following.

25 MR. QUIN: Right. Mr. Tallant and Mr. McMillion,

1 you all made either together or individually presentations to
2 the Commission of Fine Arts expressing your positions?

3 MR. McMILLION: Yes, we did.

4 MR. QUIN: Thank you.

5 MR. TALLANT: Yes.

6 MR. QUIN: And Mr. Tallant, with regard to the
7 existing FAR of the site, do you know what the permitted FAR is?

8 MR. TALLANT: I believe it's 6.

9 MR. QUIN: And what is the FAR that we're
10 seeking?

11 MR. TALLANT: Just under 6.

12 MR. QUIN: Thank you. Those are the three
13 matters of just correcting the record or clarifying the record.

14 The other point that I wanted to make, I didn't
15 want to jump up earlier on a question that Mr. May asked about
16 binding arbitration but at the appropriate time, maybe now, I'd
17 like to make an objection for that.

18 Because I think it's very important that we show
19 the Applicants that we do understand their position and are
20 willing to appoint liaison communicators for both the Developer
21 and General Contractor and that will be covered by our rebuttal
22 witness.

23 CHAIRPERSON MITTEN: All right.

24 MR. QUIN: But with regard to an objection to
25 that, a binding arbitration board, first of all, as you know,

1 the Zoning Commission would have no authority to appoint or
2 establish or monitor. Secondly, it's really not appropriately -
3 - could not be done legally because arbitrations normally are
4 dealt with in terms of when you have a contractual relationship
5 and they're put in the contract.

6 But may be the more important points are that
7 it's not feasible or appropriate because of the legal
8 relationship between the Developer and the General Contractor.
9 Normally these matters are dealt with by the General Contractor
10 through his insurance and through his subcontractors.

11 So the Developer has differences, this is just an
12 objection for the record, there are differences of opinion that
13 can come out between the Developer and the General Contractor.
14 I just want to point out that it's a very complicated situation
15 and I don't think that we can have a board as envisioned.

16 We will, however, address the issue of what we
17 can do. Thank you.

18 CHAIRPERSON MITTEN: We look forward to that. Do
19 you have any other questions then?

20 MR. QUIN: No.

21 CHAIRPERSON MITTEN: All right. Let's see. Is
22 Commissioner Ferrell here this evening? No. Is Mr. Saleem here
23 this evening?

24 (No response.)

25 CHAIRPERSON MITTEN: No. Is Mr. Parker here this

1 evening.

2 (No response.)

3 CHAIRPERSON MITTEN: Okay, there's no more cross
4 examination then. Thank you all.

5 MR. McMILLION: Thank you very much.

6 MR. TALLANT: Thank you.

7 CHAIRPERSON MITTEN: Is there anyone here
8 representing the Near Northeast Neighborhood Task Force this
9 evening? I know we received some written testimony from Mr.
10 Parker. But is there anyone here representing that party in
11 opposition?

12 (No response.)

13 CHAIRPERSON MITTEN: All right. Then we will go
14 to our witness list and I'm going to use the witness list that
15 we have been, that we carried forward from November 8th and last
16 Thursday. And then if anyone has signed up this evening that
17 wasn't on these other two lists, we'll pick them up at the end.

18 And again, I'll call you up in panels of three.
19 Norman Williams, Richard Blackford. I'm not going to call the
20 people who came forward as part of the task forces. Is that
21 what you expected?

22 (No response.)

23 CHAIRPERSON MITTEN: All right. Gerald Forsburg?
24 Mr. Williams, when you're ready, you can begin. And just --
25 there you go. And just state your name for the record as you

1 begin.

2 MR. WILLIAMS: Yes, I am Norman R. Williams. I
3 live at 217 F Street, N.E. I've been there since 1974.

4 I have a petition which we have circulated. We
5 have some 125 or more signatures on that petition requesting
6 this Commission to consider certain stipulations. I'd like to
7 read through those stipulations quickly if I may.

8 CHAIRPERSON MITTEN: Okay. You have two and a
9 half minutes.

10 MR. WILLIAMS: Item: All residences within an
11 area bounded by 2nd Street, H Street, 4th Street, and E Street,
12 N.E., shall be monitored for any structural damage resulting
13 from activity connected with excavation and construction on all
14 or any part of the five and a half acre project site including
15 de-watering, pile driving, trucking of excavated material and
16 any other activity connected with the construction phase of
17 Station Place Project.

18 Item: Prior to the start of any excavating
19 activity, each and every such residence shall be photographed by
20 a professional photographer showing front and rear walls at a
21 minimum and if requested by the resident, interior walls that
22 may be exposed to damage. Each such photograph clearly
23 indicating the date when it was taken.

24 Item: Prior to the start of any excavating
25 activity, owners of record of all such residences shall each

1 receive one copy of all such photographs taken of their
2 residence together with a printed notice set forth in clear
3 language informing them of their right to file claims for
4 damages and the proper procedures for doing so timely.

5 Item: Prior to the start of any excavating
6 activity, an independent Arbitration Board, selected by the D.C.
7 Zoning Commission shall be installed and empowered by the
8 Commission to determine the validity of any claims for damages
9 submitted to the board by any owner or a residence within the
10 area delineated above. The scheduling of meetings and other
11 procedures to be determined by the Commission.

12 Item: The determination of the Arbitration Board
13 shall be final and its assessment of indemnification costs,
14 including all costs of repair, reconstruction, alternative
15 housing where necessary, and any other valid losses suffered by
16 all claimants shall become the legal liability upon the Dreyfus
17 whose failure to comply with such determination shall result in
18 regulatory action by the Commission.

19 Item: The Dreyfus Group shall be liable for all
20 expenses associated with the operations to the Arbitration Board
21 in this connection.

22 Item: Claims for damages may be submitted to the
23 Arbitration Board at any time following the start of excavation
24 and up to 12 months after the completion of all construction
25 activity on the five and a half acre project site since

1 structural damage may not become apparent until some time has
2 elapsed.

3 Item: Claims for damages must be accompanied by
4 supporting photographs indicating the date taken together with a
5 copy of the original monitoring photographs taken prior to the
6 start of excavation plus any other relevant information and
7 shall be adjudicated timely so as to prevent imposing needless
8 hardship upon the claimant.

9 Item: The Dreyfus Group shall post a bond in the
10 amount of at least one million dollars with the Zoning
11 Commission for the sole purpose of indemnifying any an all
12 claimants for damages assessed by the Arbitration Board. Such
13 bonds will remain in effect for the entire period from the start
14 of excavation until 12 months after the completion of all
15 construction activity on the project site.

16 Thank you for your kind attendance. How'd I do?

17 (Laughter.)

18 CHAIRPERSON MITTEN: Excellent, excellent.
19 Awesome. Thank you. And we have your written statement. Mr.
20 Blackford?

21 MR. BLACKFORD: I am Richard Blackford,
22 disability retired military, over 25 year resident of 317 F
23 Street, N.E. My house had received damage previously from Metro
24 buses and I was involved in having them rerouted from our
25 street.

1 Because of the damage received from such minor
2 vibrations then, I am very concerned about damage being caused
3 by this massive construction project.

4 CHAIRPERSON MITTEN: Mr. Blackford. Hold the
5 clock for a second. We have your written statement and you
6 don't read quite as fast as --

7 MR. BLACKFORD: Oh.

8 CHAIRPERSON MITTEN: -- Mr. Williams. And so I
9 can tell you're not going to be able to get through it. So
10 maybe you can hit the highlights for us.

11 MR. BLACKFORD: Well I've tried this before and
12 I've gotten through in three minutes.

13 CHAIRPERSON MITTEN: Okay, okay. Sorry for
14 interrupting. Back on the clock.

15 MR. BLACKFORD: Okay. While I'm opposed to
16 granting a PUD as it currently stands without any conditions, I
17 am not opposed to a PUD with the following conditions.

18 1) Dreyfus will reimburse the community for all
19 construction-caused damage to our homes.

20 2) An Environmental Impact Statement, EIS, will
21 be prepared.

22 3) The building will be set back to be in line
23 with the Marshall and Railway Express Buildings.

24 These points are elaborated on in the statement I
25 turned in. Dreyfus has testified that there will be no damage

1 to my home. However, I have a difficult time trusting them for
2 the following reasons:

3 1) The original traffic study presented did not
4 study an intersection they predicted would have 30 percent of
5 Station Place-generated traffic travel through it. They also
6 had less data than D.C. government desires for a traffic study.

7 2) Their Construction Traffic Plan does require
8 them to drive on narrow, congested residential commercial
9 streets instead of main streets as originally proposed.

10 When I asked if core samples had been taken to
11 check for hazardous materials, I was told that none had been
12 taken. Later, a Site Survey Report prepared for Dreyfus, almost
13 a year earlier, discussed the analysis of core samples from the
14 site. That leads me to my second point that an EIS should be
15 prepared.

16 The Site Survey mentioned petroleum, possible
17 PCBs and mercury contaminants that if released during
18 construction could endanger my health. The EIS would permit me
19 and my neighbors' concerns about the release of carcinogens,
20 other health concerns and a traffic increase in our neighborhood
21 to be fully considered.

22 I have talked to the EPA and the President's
23 Council on Environmental Quality and they concur that an EIS is
24 appropriate.

25 With more and more buildings being surrounded by

1 Jersey walls, I am concerned that with no setback, security will
2 require the closing of many streets, thereby restricting access
3 to our homes.

4 I do not believe that subjecting Dreyfus to these
5 three conditions in exchange for granting a PUD is unreasonable.

6 Protecting our homes and allowing the entire community to have
7 their concerns addressed is essential.

8 While there have been many meetings with Dreyfus,
9 little has changed. I believe unless these conditions are
10 required, our historic neighborhood and possibly my health are
11 in danger.

12 Thirty seconds left. Did better than I tried
13 before.

14 CHAIRPERSON MITTEN: Well see I was looking at
15 your written statement so you did very well. Thank you. Mr.
16 Forsburg?

17 MR. FORSBURG: Good evening, Madam Chair and
18 honored members of the Commission. My name is Gerald Forsburg.

19 My wife, two children, and I reside at 215 F Street, N.E.,
20 within 200 feet of the proposed Station Place Development.

21 Before I proceed with my testimony, I need to
22 state for the record that I was employed by the Office of Zoning
23 as a Zoning Specialist and under the supervision of the
24 Secretary to the Commission at the submission of this project.

25 I believe there's sufficient documentation in the

1 case file stating that I had been relieved of any and all duties
2 involved in this case because of my interests in the project and
3 my involvement in the community.

4 In addition, I am currently not employed by this
5 Agency or by any other government Agency at present.

6 My comments will address the following. First,
7 the architecture and amenity package. Second the willingness of
8 the Applicant to work with the community. And third, the
9 economic potential of the site and the need for area-wide
10 planning rather than site-specific planning.

11 The current proposal, as you are aware, calls for
12 some fairly unquantifiable amenities, specifically exceptional
13 architecture and design. The massing is far out of proportion
14 although the break at G Street is quite helpful to the
15 surrounding community. And even to the monumental buildings of
16 Union Station and the Thurgood Marshall Judiciary Building.

17 The materials, fenestration and broken facade
18 serve more as a mockery of the neighboring architecture rather
19 than exceptional design. It is clear that this building was
20 designed without any consideration of the adjacent bozart-style
21 Union Station or of the turn-of-the-century two- and three-story
22 brick townhomes.

23 Additionally, the current entrance off Columbus
24 Circle is a rather odd and abrupt transition between the fine
25 details of Union Station and the Marshall building. The infill

1 of the entrance will add strong vertical lines to an otherwise
2 horizontal fabric.

3 It is understandable that at the set down meeting
4 on June 11, 2001, Mr. Parsons had suggested review by the
5 Commission of Fine Arts so that the Commission would not be put
6 in a position to have to act as a design review body.

7 Despite the CFA's seemingly contradictory review
8 and subsequent approval, and given that this is a PUD in which
9 authority of the review of the architecture and design is
10 delegated to this Commission in the Regulations, I would simply
11 like to urge as our local body in this matter to draw on your
12 vast expertise and design and to truly explain the exceptional
13 architecture and design being proposed.

14 I believe that the glass box was trendy in the
15 60's and 70's but has become more synonymous with suburban
16 sprawl rather than exceptional urban form and function or the
17 revitalization of our cities.

18 Regarding other amenities, I must commend the
19 Applicant for the proposal to give funds to the H Street
20 Merchants Association. However, I am perplexed as to where
21 these funds have suddenly come from.

22 In light of time, I'm going to summarize and I'll
23 had the rest of this in to you. I have included two -- given to
24 the Commission a letter to the Mayor that outlines a lot of this
25 as well.

1 And I guess what I would like to say in closing
2 is mixed use projects are the backbone of the planning concept
3 of new urbanism and are working tremendously well in many parts
4 of the country.

5 I would like to direct your attention to the
6 Pentagon Row Project in Arlington which is currently nearing
7 completion and in which there is a ground floor retail, a
8 community gathering place with an ice rink and residential
9 above. Frankly, I'm tired of needing to drive to the suburbs
10 for basic shopping needs.

11 While it is understandable that some element of
12 the development of this site needs to be office for the sake of
13 economic return, incorporating other uses on this site would be
14 far more desirable to the surrounding community and would
15 provide for the community much needed facilities and services.

16 Last, phasing would allow construction of the
17 office component, thereby not holding up the SEC's move as well
18 as provide a safe and secure setback for putting up an all-glass
19 federal building while affording the Developer time to secure
20 approval on tenants for other portions of the project.

21 CHAIRPERSON MITTEN: Okay, that's going to be it
22 then.

23 MR. FORSBURG: Thank you.

24 CHAIRPERSON MITTEN: Thank you. Any questions
25 from the Commission for this panel? Any questions? Mr. Quin,

1 any questions?

2 MR. QUIN: No thank you.

3 CHAIRPERSON MITTEN: Mr. Edwards or Mr. McMillion
4 is going to come up and ask a few.

5 MR. McMILLION: Thank you.

6 CHAIRPERSON MITTEN: I think you're going to have
7 to sit down there with them and use those mics because the other
8 one's not picking up.

9 MR. McMILLION: All right. Mr. Williams, you've
10 obviously spent a lot of time on this petition. Where were
11 these names gathered for this petition?

12 MR. WILLIAMS: They were gathered in the area --

13 CHAIRPERSON MITTEN: You need to turn on your
14 mic, Mr. Williams.

15 MR. WILLIAMS: They were gathered in the area
16 between 2nd and 4th, E and H Street, N.E., all of them. All of
17 the ones that the Blackfords and we gathered. They took half of
18 that, we took the other half. And we collected signatures only
19 from the residents or the people living in those buildings.

20 MR. McMILLION: You've obviously spent a lot of
21 time at this and you're particularly concerned about possible
22 damage. Do you have any special reason for your concern?

23 MR. WILLIAMS: Yes, I certainly do. It's already
24 been mentioned by Mr. McMillion that the buses ran on F Street
25 some years ago. Our house at 217 F Street began to experience a

1 separation between the main part of the building and the two-
2 story brick and stone bay window.

3 We were told by a civil engineer that if
4 something wasn't one about this, that the entire front of the
5 house would collapse. And we subsequently had to install heavy
6 steel braces around the front of the building to reconnect it to
7 the cost of about \$4,000 along with a lot of pointing of the
8 stonework which is also damaged.

9 MR. McMILLION: Mr. Blackford, in your testimony,
10 you stated particular concern for the traffic study. Could you
11 tell us a little about the reason for your concern?

12 MR. BLACKFORD: Well, the original study is dated
13 the 30th of April and revised on the 30th of July. At the
14 meeting that Dreyfus had with us, the first meeting, they
15 mentioned this traffic study and said that everything was in
16 very good shape, there'd be no problems with traffic.

17 And I asked for a copy of that traffic study and
18 I mentioned that there was an old traffic study done about ten
19 or fifteen years earlier that showed a lot of the intersections
20 in the vicinity of Union Station were C's and D's, which means
21 heavy traffic with significant delays or unstable flow with
22 significant delays.

23 I was never given a copy of that original traffic
24 study. I did get the one that was revised 30 July. My guess
25 was well maybe they were going to find the old study and sort of

1 bring things together. I wasn't sure.

2 But -- then, of course, as I mentioned earlier,
3 there was predicted that 30 percent of the Station Place-
4 generated traffic was going to come from the west on H Street
5 through North Capitol Street. They never took a look at the
6 traffic at H and North Capitol and so that makes it very bad.

7 And the old traffic study that I'd talked about
8 was done by Dr. Bregman and that showed that the traffic on H
9 and North Capitol then was to be -- that was traveling west was
10 a C or a D, which is very -- which is not good.

11 CHAIRPERSON MITTEN: Did you have a copy of that
12 that you want to submit for the record? Of this traffic study
13 that Dr. --

14 MR. BLACKFORD: I have the whole thing. It's
15 about an inch thick. But I can go ahead and take out the
16 pertinent parts and get copies and I can bring them back down to
17 you. That would be no problem.

18 CHAIRPERSON MITTEN: Okay.

19 MR. BLACKFORD: Also, in the traffic study that
20 they have put forth now, they call for a level of service of E
21 as acceptable. The Institute of Traffic Engineers says that a
22 level of service of D is generally acceptable. In Idaho,
23 Florida, and Illinois, they demand -- they call a level of
24 service of C or better as desirable.

25 A level of service of E is full capacity and you

1 often have to wait through several traffic lights. So it seems
2 to me that the traffic is in very, very bad shape and it's going
3 to get worse with this.

4 MR. McMILLION: I can move quicker, but let me
5 just ask --

6 CHAIRPERSON MITTEN: You need to turn your mic
7 on.

8 MR. McMILLION: Thank you. Briefly, you said you
9 were concerned with the setback of this proposal from a security
10 point of view. I believe you said from the SEC's security point
11 of view. Now the SEC has said they don't have a concern. Why
12 do you think they might be concerned?

13 MR. BLACKFORD: Well I look at what the Marshall
14 --

15 CHAIRPERSON MITTEN: I don't know that Mr.
16 Blackford is really in a -- has the capacity to assess the
17 security needs of the SEC. So if you'd like to speak to
18 something that relates to you personally, but not to speculate
19 about the SEC's needs.

20 MR. BLACKFORD: Well, all I can see is what is
21 happening with the Marshall building. They are requiring trucks
22 that are waiting to come into their loading dock to park on the
23 north side of F Street, right next to the parking meters where
24 cars are already parked.

25 And I wonder if they will be able to do that when

1 the SEC building is there.

2 CHAIRPERSON MITTEN: Are you saying that they're
3 doing loading there or they're doing staging there?

4 MR. BLACKFORD: They are parked -- they appear to
5 be parked waiting to go into their loading dock or maybe some of
6 them are taking some things off by hand if they're small. But
7 there are large trucks parked there most of the time.

8 CHAIRPERSON MITTEN: Okay.

9 MR. BLACKFORD: And they are doing deliveries.
10 So, that makes it dangerous.

11 CHAIRPERSON MITTEN: Thank you.

12 MR. McMILLION: Mr. Forsburg, I know that you've
13 been quite interested in mixed use developments and you've
14 mentioned mixed use here today. Could you tell us a little bit
15 about your assessment of the economic benefit of this project
16 and the opportunity cost that you believe might be foregone.

17 CHAIRPERSON MITTEN: I'm going to have to -- that
18 goes beyond the scope of his testimony and if there's -- is
19 there some more elaboration in your written testimony of that
20 response?

21 MR. FORSBURG: There is, yes. In the letter that
22 you have as well as in my written testimony. Unfortunately,
23 that was the main portion that I didn't get a chance to speak
24 on.

25 CHAIRPERSON MITTEN: Okay.

1 MR. FORSBURG: Just regarding how it would affect

2 --

3 CHAIRPERSON MITTEN: Okay. I just don't want
4 this cross examination to be bootstrapping the time. Okay? I
5 think that's it then for this panel. Thank you very much.

6 Winifred Williams, Frances Barnes, Frances
7 Barnes?

8 PARTICIPANT: She's not here.

9 CHAIRPERSON MITTEN: Okay. Robin Meigel? I'm
10 going to get you some company there, Mrs. Williams, just bear
11 with me. Marilyn Saks-McMillion? Robert Nevitt?

12 Mrs. Williams, you can go ahead and start
13 whenever you're ready. Just state your name for the record as
14 you begin.

15 MRS. WILLIAMS: My name is Winifred Williams. My
16 husband and I live at 217 F Street, N.E., half a block from the
17 proposed construction site.

18 Soon after we bought our house in 1974, someone
19 told me that it was built on fill as all the houses in that area
20 were. I shrugged my shoulders and forgot about it for nearly 20
21 years.

22 Then, when Metro buses began operating along F
23 Street, causing ground vibration, we experienced a serious
24 structural damage to our house which my husband has previously
25 described.

1 An engineer we consulted at that time told us
2 there was another possible reason for our problems: changes in
3 the water table during the construction of the Thurgood Marshall
4 Judiciary Building. As you can imagine, when we learned this
5 year of plans for another building, Station Place, we were
6 extremely alarmed.

7 After your last meeting on November 8, Richard --
8 my husband and I, along with Richard and Peggy Blackford
9 composed a petition to you to require the Louis Dreyfus Property
10 Group to indemnify all residents in the area for any resulting
11 damage to their property and to file a bond in the amount of \$1
12 million before the start of excavation.

13 Last Saturday, November 24, we began knocking on
14 neighbor's doors to get signatures. And my husband has told you
15 the area that we covered. More than 125 residents in the six-
16 block area signed their names. I have turned the originals into
17 your clerk. You have copies, too. I turned them in last week.

18 Of all the people we spoke with, only six did not
19 want to sign the petition and we couldn't speak with everybody
20 because a lot of people were not at home. Some signers said
21 they very much want the building to go up but they still would
22 like to be sure their homes will be protected in the process.

23 Many did not know anything about Station Place.
24 One signer, who could not be at this meeting tonight because he
25 would be out of town, well that was last week, ran after us to

1 give us his letter to submit to you. I've given it to your
2 clerk but I would like to quote its last paragraph.

3 "It is important that you require the builders to
4 post a significant surety to assure full compensation to
5 District residents who are damaged as a result of this monstrous
6 building project. I suggest a bond of upwards of \$5 million due
7 to the current value of the surrounding houses."

8 Thanks for listening. I hope you can help us and
9 all the other residents in our neighborhood.

10 CHAIRPERSON MITTEN: Thank you, Mrs. Williams.
11 And Mrs. McMillion?

12 MRS. SAKS-McMILLION: My name is Marilyn Saks-
13 McMillion. I'm a native Washingtonian and I've lived in the 200
14 block of F Street since 1987. I'm a member of several Capitol
15 Hill civic organizations and am a former realtor on Capitol
16 Hill.

17 I'd like the Commission to consider the following
18 neighbor concerns that many of us still have for the Developers.

19 First, we want the verbal assurances of the Developers, in
20 writing. We want to welcome to the neighborhood as good
21 neighbors.

22 Our homes are built, as you have heard, on
23 unstable landfill from the original excavation and construction
24 of Union Station which is quite different from what is normal
25 for downtown office construction sites. Therefore, as already

1 outlined by others, we want assurances that the proposed 200-
2 foot limit from the property line be extended up to 4th Street.

3 Let me tell you why some of the neighbors are
4 dead serious about this. About eight years ago, when the city
5 reintroduced buses along F Street, the constant rumbling and
6 vibrations not only caused roofs to develop cracks and leaks, in
7 at least two cases, ceilings collapsed, nearly hitting a
8 grandmother and her granddaughter in their bedroom across the
9 street from us.

10 Expensive replacements for roofs, paid for by the
11 owners, had to ensue. Also, please note that the intersection
12 at F and 4th Streets literally collapsed, causing the city to
13 not only have to rebuild that intersection, but to repave the
14 300 block of F Street.

15 F Street is hollow. It's important that you
16 understand that. That's part of what makes our neighborhood
17 unique and what really creates a lot of anxiety on our part.
18 If, as the Developers claim, there really is no problem or
19 concern beyond the 200 feet, then there should be no problem
20 with them including these houses in a pre-construction site
21 survey.

22 Linked to this, as we mentioned, we would like a
23 binding Arbitration Panel to resolve any construction-related
24 damage claims. We want the facade of the building, again,
25 stepped back further from the sidewalk. Thirty feet has been

1 proposed to respect the line along 2nd Street established by
2 every other building along F Street to the Capitol Building.

3 The proposed building is much too close and much
4 too massive to tower over a neighborhood of fragile, century-old
5 buildings and we want to preserve the fabric of the neighborhood
6 that attracted us and the Developers and their lead tenants to
7 our neighborhood in the first place.

8 I also want to know how a federal office can
9 possibly be considered secure if it's to be built to the
10 sidewalk and if it's principally built of glass.

11 Certainly after the events of September 11, after
12 public demonstrations in Seattle and D.C. protesting IMF and
13 other economic issues, and with the current threat of anthrax
14 still very heavy in the air of this neighborhood, we are quite
15 understandably concerned and worried about homeland security
16 right here.

17 We're also still quite concerned about the
18 possibility of subsidence and ground settlement as the result of
19 the first pumping out of water. Others have talked about that,
20 I won't spend more time on that.

21 We also want to see results of an acceptable
22 environmental study conducted at the site and wants to know that
23 it protects surrounding neighborhood. We want to know how and
24 that abatement will take place by the Developers if there's
25 leakage or airborne contamination from pollutants during

1 construction.

2 CHAIRPERSON MITTEN: Thank you. Have you
3 submitted your testimony in writing? Did you have something for
4 us?

5 MRS. SAKS-McMILLION: I can give you this.

6 CHAIRPERSON MITTEN: That would be helpful.

7 MRS. SAKS-McMILLION: It's all I have.

8 CHAIRPERSON MITTEN: Okay. If you want to make
9 copies and then submit that in the time frame, that would be
10 helpful. Mr. Nevitt?

11 MR. NEVITT: I'm Robert Nevitt. I've lived at
12 1000 South Carolina Avenue, S.E., since 1983. And I'm the
13 President of the Capitol Hill Restoration Society. In the wake
14 of a lot of excellent testimony tonight --

15 CHAIRPERSON MITTEN: Let me just interrupt you.
16 Are you going to be speaking on behalf of the Capitol Hill
17 Restoration Society?

18 MR. NEVITT: No, as an individual.

19 CHAIRPERSON MITTEN: Okay, great.

20 MR. NEVITT: In the wake of all the excellent
21 testimony tonight, I'd like to speak to just one point and it's
22 with respect to the card that we have to sign as either an
23 opponent or a proponent of the project.

24 And necessarily, I signed as an opponent but
25 working with this task force that the Restoration Society

1 sponsored and in the many discussions with the Developers and,
2 in fact, in the whole philosophy of the Association, there
3 hasn't -- at no time, have we announced ourselves as opponents
4 of this project.

5 We join with the neighbors in support of the
6 development of the project. In fact, our goal from the
7 beginning was, if possible, to walk arm and arm with the
8 Developers into these hearings and say we're all in agreement on
9 this, assuming that they would be able to make the
10 accommodations to some of the points that you've heard testimony
11 about tonight before we actually got to this point.

12 Unfortunately, that's not the case and so I'm
13 left urging the Board to consider the extent of the requests of
14 the neighbors in respect to this enormous project. Enormous in
15 size, enormous in longevity. This is going to go on for a long
16 time.

17 And require the Developers to make these, what I
18 think are minor changes, ones that shouldn't deter the SEC as a
19 tenant, and shouldn't represent much cost to the Developers and
20 help to make this a project that the neighborhood will welcome
21 without reservation. Thank you.

22 CHAIRPERSON MITTEN: Thank you, Mr. Nevitt. Any
23 questions for this panel? Any questions, Mr. Quin?

24 MR. QUIN: No questions.

25 CHAIRPERSON MITTEN: Mr. McMillion? Do you want

1 to ask your wife some questions?

2 MR. McMILLION: No.

3 CHAIRPERSON MITTEN: Okay.

4 (Laughter.)

5 CHAIRPERSON MITTEN: Thank you all.

6 MR. NEVITT: Thank you.

7 (Laughter.)

8 CHAIRPERSON MITTEN: All right, I have a few more
9 people and unfortunately, I have a name or two on the list as
10 proponents and that portion of the hearing has passed, so we're
11 just taking opposition testimony this evening.

12 Mr. Russell Storm? And Carolyn Serfass? And is
13 there anyone else who did not sign the witness list that would
14 like to testify in opposition?

15 (No response.)

16 CHAIRPERSON MITTEN: Okay. Mr. Storm, you can go
17 first and just identify yourself for the record as you begin.

18 MR. STURM: Thank you. My name is Russell Sturm.

19 CHAIRPERSON MITTEN: Oh, sorry, Sturm.

20 MR. STURM: That's quite all right. I've had a
21 lifetime of it. I'm raising three children presently at the
22 home that I renovated in 1989 in the 500 block of 3rd Street.
23 And I start by warmly welcoming the SEC to our neighborhood. I
24 believe they will make great neighbors.

25 I believe that the CHRS positions that you heard

1 tonight does represent a reasonable response to the project
2 that's been proposed by Dreyfus. I speak on my own behalf,
3 however, tonight.

4 The economic benefits of Station Place to the
5 community and for Dreyfus even in a downsized building are quite
6 clear.

7 I'm looking for a development which enhances the
8 community I'm committed to and does not permanently forestall
9 the city's future vision of a vibrant H Street corridor, does
10 not impose a harsh and overwhelming transition between the
11 human-scale neighborhood where I live and the monumental core of
12 the city.

13 Clearly I act in self-interest as a committed
14 resident of Capitol Hill. Likewise, the small Developers we
15 heard from last Thursday night who own property across the
16 street from Station Place in the narrowly banded C-2-A zone act
17 in self-interest act in self-interest when they say that they
18 want a development without conditions.

19 This is a remarkable position to take as noted
20 with some incredulity by Commissioner Hood in his follow up
21 questions last Thursday night. In this case, I think the
22 commercial nature of their self-interest is quite clear.

23 Similarly, Louis Dreyfus Corporation acts in its
24 self-interests, we all know that. They simply seek to build as
25 much building as possible with the lowest possible cost. I mean

1 that is their raison d'etre.

2 And they are expected to push as far as the city
3 will let them and this Commission will let them. Allow them to
4 go on acting in that self-interest. And that is the free market
5 system that we live in.

6 This approach was clearly reflected in the
7 initial design of the building which, I note, is significantly
8 different than what we see today. I believe that the
9 community's interest lies not in preserving what we have but in
10 building a more prosperous and livable city.

11 Therefore, as indicated by Chairwoman Mitten, it
12 is critical that we don't make a big mistake in what is perhaps
13 the most important undeveloped tract of land left in the
14 District. And let's make no mistakes here. This project is a
15 great opportunity for the District.

16 In this context, I have three points in summary.

17 One, the imposing wall of a ten-story glass office building
18 simply does not belong at the property line in this location.
19 The siding of the building should reflect and respect the Master
20 Plan of the Architect of the Capitol and it should line up with
21 the entire line of development that it buttresses on 2nd Street,
22 a setback of 34 feet from the property line.

23 Similarly, it is unconscionable to think that the
24 building would be sided at this location with the expectation
25 that security measures would be imposed in the public space.

1 Second, protection should be put in place for all
2 property owners whose property lies reasonably within harm's way
3 of the construction site. This means full baseline surveys and
4 structural damage assurances through whatever mechanism is
5 practical at least a two block radius from the development of
6 this size.

7 Third and final is that the automobile entry at
8 the F Street entrance needs to be severely restricted, I
9 believe, to limit access at the point to only a small portion of
10 the drivers who use that garage. It is not realistic to expect
11 that there will not be a back up of traffic onto Columbus Circle
12 from the combined entrances of Marshall and Station Place.

13 And above all, I'd like to avoid -- this is my
14 final sentence -- I'd like to avoid having to walk around more
15 body bags at the crosswalk in route home from the Metro which
16 I've done in the past. And with added volume at that
17 intersection, I don't see a way around it.

18 It is with great sincerity I thank you for my
19 opportunity to speak tonight.

20 CHAIRPERSON MITTEN: Thank you, Mr. Sturm. Just
21 hold your seat and we'll get -- is it Serfass?

22 MS. SERFASS: Serfass.

23 CHAIRPERSON MITTEN: Serfass.

24 MS. SERFASS: My name is Carolyn Serfass. I've
25 lived at 500 E Street, N.E. since 1975 with my three children

1 and husband. I've been an ANC Commissioner and especially
2 during the time when the bus situation was causing great damage
3 to the neighborhood around 2nd and F.

4 I've also been involved with the traffic study
5 for the Union Station area over the last 10 years and I'm sorry
6 I don't have written testimony for you tonight.

7 But I'm coming to tell you that we have tried
8 over the last year at least with the task force from the
9 Restoration Society to work with this building and the proposed
10 plans from the Developer as they became available to us. I
11 think this is a project that can be done. I think it needs to
12 respect the fact that it is a transition structure from a
13 Victorian neighborhood of two-story buildings to Union Station.

14 The plans, so far, have not indicated to me a
15 transition structure that would be an asset to the neighborhood.

16 One of the things that would help would be to have it set back
17 from 2nd Street. 2nd Street is a fairly small street. It is not
18 one of the avenues in D.C.

19 And having a large office building with high
20 walls is not a transition to a two-story residential
21 neighborhood.

22 One of the things I've worked on over the years
23 has been the protections of the residential neighborhood from
24 2nd Street east and that has been a constant struggle, both
25 between the Architect of the Capitol taking over neighborhood

1 space and commercial development, sorry Peter, commercial
2 development taking over neighborhood space.

3 And I think that there's a way that we can all
4 live together but I think there needs to be a respect. You've
5 heard from people here today who have had long history of D.C.
6 not responding, the Developer not responding, the construction
7 people not responding, having to stand in front of dump trucks
8 because it was unusually dry during the Thurgood Marshall
9 excavation and that dust was coming five and six blocks away
10 from the construction site.

11 The bus situation, you asked that question
12 earlier. I can answer that a little bit. The buses were
13 rerouted onto 4th and 6th which are north and south routes during
14 a time when part of F Street collapsed and they had to take the
15 bus route off there while they recovered the car that fell down
16 into F Street and repaved and rebuilt the street.

17 CHAIRPERSON MITTEN: I need you to summarize now.

18 MS. SERFASS: During that time, they ran the
19 buses on 4th and 6th, there was major damage to houses on 4th and
20 6th during that time and those residents were thrilled when the
21 bus route was put back on F.

22 And then we started getting damage on F. We
23 subsequently were able to get the bus route totally rerouted out
24 of the neighborhood.

25 This is a project that needs to proceed with

1 great caution because it's not -- they're not normal things
2 happening where they want to build this building. Thank you.

3 CHAIRPERSON MITTEN: Thank you. Any questions
4 for these folks? Any questions?

5 (No response.)

6 CHAIRPERSON MITTEN: Mr. Quin? Any questions?

7 (No response.)

8 CHAIRPERSON MITTEN: Mr. McMillion, any
9 questions?

10 (No response.)

11 CHAIRPERSON MITTEN: Thank you both for coming.
12 Now rebuttal by the Applicant. About how long do you think
13 you're going to need, Mr. Quin?

14 MR. QUIN: I'm hopeful we can do all of this, I
15 don't know how long questions might take, within 30 minutes.

16 CHAIRPERSON MITTEN: Okay.

17 MR. QUIN: If we can -- I mean I'm going to work
18 hard at it.

19 CHAIRPERSON MITTEN: Oh no, no, that's fine.
20 Let's just take a three minute break.

21 MR. QUIN: Okay.

22 CHAIRPERSON MITTEN: And then everybody will give
23 you their full attention.

24 MR. QUIN: Thank you.

25 (Whereupon, the foregoing matter went

1 off the record at 8:32 p.m. and went
2 back on the record at 8:39 p.m.)

3 CHAIRPERSON MITTEN: If everyone could just take
4 their seats please. And we can get started with the rebuttal.

5 MR. QUIN: Madam Chairperson and members of the
6 Commission our first witness is Mr. Braunohler who's going to
7 cover some of the items that were discussed both tonight and in
8 the prior hearing relating to the development. And he will
9 proceed expeditiously.

10 MR. BRAUNOHLER: Good evening. For the record,
11 my name is Robert Braunohler. I'm the Vice President of Louis
12 Dreyfus Property Group. And I will be managing the development
13 of Station Place on behalf of Louis Dreyfus.

14 There are several issues that have come up in the
15 testimony both tonight and in the prior two hearings which I'd
16 like to address and quickly run through some answers which may
17 help you understand aspects of this which can be a bit
18 confusing.

19 The first is the phasing of construction and the
20 speed of development. We have no disagreement with the
21 neighbors in the community regarding the speed of the
22 development of this entire project. It is in our best interests
23 as land owner that this entire three phase project be built as
24 expeditiously as possible.

25 Obviously the second phase of the building, the

1 timing of that can be impacted by SEC exercising its first
2 option. It has an option for 100,000 to 125,000 square feet
3 which can be exercised in the first three years following the
4 move in to Phase 1 of the project.

5 That is a five-year option with a 24-month notice
6 period. They secondly have an option which could be exercised
7 from about the Year 10-1/2 to Year 12 for an additional 100,000
8 to 125,000 square feet of space, again with a 2-year notice
9 period.

10 We have the ability to build Building 2 on
11 speculation if the market is such that we deem it advisable to
12 do that. We also will be actively marketing Building 3 as soon
13 as we receive our zoning approval.

14 Building 3 is approximately a 500,000 foot
15 building, totally suitable for an agency headquarters, for a law
16 firm, for an association headquarters, for any number of large
17 users.

18 And our intelligence in the marketplace tells us
19 that there are a number of large users out there looking for
20 their options to house themselves in the District of Columbia.
21 And this is going to be a very attractive option.

22 Our marketing effort will be going full speed as
23 soon as we receive our zoning. So we believe that this project
24 is going to go forward sooner rather than later.

25 I cannot sit here tonight and give you dates for

1 Buildings 2 and 3. But I can tell you that there is no
2 incentive on the part of Louis Dreyfus to sit on that land and
3 not do anything with it.

4 I'd like to quickly move on to the second item
5 which is the amenities package. I want to make sure that
6 everyone understand the amenities that we're asking for. We're
7 asking for very little flexibility in this PUD application.

8 As Mr. Quin has noted, we are 47,000 square feet
9 below matter of right density. Nonetheless, we believe we've
10 put together a very adequate and very comprehensive amenity
11 package.

12 We have promised an entrance to the building from
13 the H Street overpass and from 2nd Street such that people in
14 the community and in from the building can directly access Union
15 Station from H Street and from 2nd Street.

16 Until such time as the H Street overpass
17 connection is available, i.e., the construction of Building 3,
18 we have committed to upgrade and beautify the sidewalks from 2nd
19 Street to 3rd Street, along G Street, N.E., in connection with
20 the Department of Public Works.

21 So that that will serve as an interim connecting
22 link from the building to H Street. We have provided a very
23 extensive Construction Management Plan. It's been handed to you
24 in a more consolidated version tonight.

25 And, in a few minutes, Art Von Roemer from J.A.

1 Jones/Tompkins will describe some aspects of that which have
2 been controversial.

3 Another item which has been discussed quite a bit
4 is the Community Advisory Committee. We have proposed a nine-
5 member Community Advisory Committee with two members appointed
6 by ANC 6A, one member representing the H Street Merchants
7 Association, one member representing H Street Community
8 Development, one member from Stanton Park, one member appointed
9 by the Ward 6 Council Member and one member from Union Station
10 Redevelopment Corporation and the Administrative Office of the
11 U.S. Courts and one member from the Capitol Hill Restoration
12 Society.

13 A representative of Louis Dreyfus Property Group,
14 i.e., yours truly, will be at every one of these monthly
15 meetings and we'll also have a representative of J.A.
16 Jones/Tompkins attending every one of the meetings with this
17 Community Advisory Committee.

18 We -- to the next item -- the issue of survey and
19 damage and settlement and water table and vibration. We will
20 have our geotechnical engineer -- we have our geotechnical
21 engineer, ECS, Ltd., here. Representatives are available to
22 give detailed answers on these issues.

23 I just want to say two things. One, we agree
24 completely that any building that's reasonably within harm's
25 way, to use the phrase that you heard tonight, should be

1 surveyed. We believe that all the buildings that are reasonably
2 within harm's way are within 200 feet of our property line.

3 We also believe that the measures that we are
4 going to take and that you can question our geotechnical
5 engineer on are scientifically validated.

6 They are more than any Developer would do in a
7 similar situation, they go much further from our property line
8 than any other Developer that I'm aware of has ever gone with a
9 property survey.

10 And we've taken into account the unusual nature
11 of the soils in the neighborhood. We cannot agree to binding
12 arbitration of claims resulting from construction damage.
13 There's several reasons for that which Mr. Quin has touched on.

14 But the main reason is that most of the damage
15 claims will deal with subcontractors to a General Contractor.
16 The General Contractor is in a contractual relationship with the
17 Developer, not with the neighborhood.

18 An arbitrator can typically only arbitrate in
19 accordance with a contract. There will be no contract between
20 the neighbors and the GC. So we have an insurance company who's
21 providing liability insurance to a General Contractor and a
22 General Contractor who's overseeing the work of subcontractors.

23 If there's damage caused by any subcontractor or
24 the General Contractor or any of their vendors or suppliers,
25 there are common law remedies for dealing with that. I don't

1 believe the Zoning Commission has to try to invent a new process
2 for dealing with property damage relating to construction
3 projects.

4 MR. QUIN: Will you identify just briefly the
5 appointment of liaison? You've mentioned it briefly but in a
6 different context. As far as context for claims, how will that
7 be handled?

8 MR. BRAUNOHLER: Again, we have this standing
9 organization called the Community Advisory Committee with
10 permanent membership by the General Contractor and by the
11 Developer. This is the appropriate forum for bringing claims
12 forward.

13 There will be constant availability of the
14 Contractor on a 24-hour a day, 7-day a week basis. And so if
15 there's a crisis at night, if there's a crisis on a Saturday and
16 someone's home is settling into F Street, there will be someone
17 available to respond to that. And it's not a situation that
18 requires the invention of a new procedure to handle it.

19 Finally, we have a good working relationship with
20 the Judiciary Building, the Thurgood Marshall Building. And we
21 have dealt with them on their parking and traffic concerns. We
22 have already written letters of support for them, on their
23 behalf, regarding the pedestrian intersection at Columbus Circle
24 and 1st Place, N.E., and also the childcare drop-off facility at
25 2nd and F Streets, N.E.

1 We also have agreed to try to play intermediary
2 between the SEC and the Administrative Office of the Courts such
3 that the Administrative Office of the Courts would have a right
4 of first refusal for any parking in our building, in Station
5 Place, which is not required by the SEC under Phase One of the
6 project.

7 So I believe we're working in a good faith effort
8 to try to accommodate the concerns of not only the neighborhood
9 but the Administrative Office of the Courts in that regard.

10 MR. QUIN: Mr. Braunohler, last question, just to
11 confirm the intent to join the bid.

12 MR. BRAUNOHLER: We have notified the people who
13 are organizing the Capitol Hill Business Improvement District
14 that Station Place will be a member of the Capitol Hill bid.

15 We have further understood in our discussions
16 with Capitol Hill that it is their intention once their bid is
17 formed, it's in the legislation before the Council right now, it
18 is their intention to try to include H Street in that bid within
19 the near future.

20 So by joining Capitol Hill we are, in fact,
21 putting ourselves in a position to be supporting a future H
22 Street Business Improvement District as well. And we are very
23 pleased to do that and we're very pleased to say that the SEC
24 agrees wholeheartedly with the decision to join that bid.

25 MR. QUIN: Madam Chairperson, that's Mr.

1 Braunohler's testimony. If we could go straight on through,
2 then we can have them all up for questions, if you have any.

3 CHAIRPERSON MITTEN: That's preferable.

4 MR. QUIN: Thank you.

5 CHAIRPERSON MITTEN: Thank you.

6 MR. QUIN: Our next witness is Mr. Donald
7 Sherman, representing the SEC. And he has brought with him
8 copies, I believe, of letters which -- I have one.

9 I would like him to address just briefly first of
10 all, well the issues that were raised last time and tonight, to
11 a certain extent, Mr. Sherman, can you tell me what your role is
12 at SEC?

13 MR. SHERMAN: Yes, good evening. My name is
14 Donald Sherman. I'm the Operations Officer for the Office of
15 Administrative and Personnel Management at the SEC.

16 My role is to serve as Advisor to the Associate
17 Executive Director, Jayne Zeidman, on facilities and operations
18 of those facilities. Included in that responsibility, I was
19 involved with the project to select Dreyfus for the building and
20 also to advise her, excuse me, the Valuation Panel on the
21 technical merits of the building itself.

22 MR. QUIN: And can you tell me on what basis and
23 why you chose just summarily Station Place?

24 MR. SHERMAN: Certainly. We issued a
25 solicitation that had specific requirements in that for the

1 building. This has been a project we've been involved with for
2 a long time and tried to get a space that we felt would measure
3 up to the level of the SEC.

4 Some of the requirements in that solicitation
5 were a high ratio of glass to office space, 650,000 square feet
6 of contiguous space for the SEC, they wanted to be close to
7 amenities such as the Metro which this met. And the Valuation
8 Panel used those factors in determining that the Louis Dreyfus
9 property was the best property for the SEC.

10 MR. QUIN: Okay. And how about the functional
11 layout concerning your programmatic requirements?

12 MR. SHERMAN: One of our big concerns right now
13 is the design of the building. We selected Louis Dreyfus on a
14 design that they presented to the SEC that incorporated those
15 things that we felt were important to us.

16 Any changes to that design that's now in front of
17 the Commission would be a serious concern to the SEC. And would
18 cause us to reconsider our position of moving into that area.

19 MR. QUIN: And would you -- let's try to examine
20 it a little bit more.

21 MR. SHERMAN: Yes.

22 MR. QUIN: What would be the effect, for example,
23 if there were setback requirements imposed greater than the SEC
24 -- Commission of Fine Arts' requirements, say the two wings in
25 Building 1?

1 MR. SHERMAN: Anything that caused the floor
2 plate of the building to change dramatically would be a concern
3 to us as far as efficiency and being able to get our floor
4 plates laid out as we wanted them for the SEC.

5 Other things that would be a concern to us that
6 would cause us to break apart divisions, it would change the way
7 the offices fit together on the floor, it would change the
8 amount of square footage that would be available to us.

9 And things like if you elongate the floor space,
10 it would require more egress out of the building which would
11 impact useful square foot of the building. It would be a
12 serious concern to the SEC.

13 Reduction in the amount of windows is a serious
14 concern to us. We are in a very competitive market for
15 attorneys and accountants. And while we can't pay competitive
16 wages with the private sector, we can offer amenities in the
17 building equal to what a private firm would offer.

18 And that's very important to us. We want high
19 quality people and it's important to management at the SEC that
20 we have the facility to offer to them that will give us a chance
21 to compete with the private sector.

22 MR. QUIN: Madam Chairperson, that concludes the
23 testimony of Mr. Don Sherman.

24 Our next witness is Mr. Kinsella of the Kevin
25 Roche and John Dinkeloo and Associates. And he will briefly

1 deal with the transition of the site from the Union Station
2 tracks to the neighborhood. And also just briefly describe the
3 changes that were made with the guidance of the Commission of
4 Fine Arts and Office of Planning.

5 MR. KINSELLA: My name is Philip Kinsella. I'm
6 Kevin Roche's partner. I have been involved in the project
7 since the very beginning. The SFO, the due diligence work we
8 had done with the Dreyfus Group.

9 Initially the SFO had a requirement for us to do
10 a stacking plan. That wasn't the very first thing we did. But
11 once the design was looked at and we were one of the candidates,
12 a follow up was to do a stacking plan.

13 And the stacking plan for this building was every
14 department, every division, every floor from below grade levels
15 right up through the tenth floor, with all the circulation,
16 communication, etc. So this building and this plate are very
17 specific.

18 The 120-foot wing, a 30-foot spine core, the 45-
19 foot office space with glass all around. You're looking at an
20 initial submission right here now. The glass area was picked up
21 through the utilization of the courtyards so we got the ratio
22 which was being looked for and it was very important.

23 The initial layout for the site was the spine
24 building, 120-foot deep, each of the wings coming out with
25 generous courtyards, all the way down. We broke that up so that

1 the facade had setbacks at the corners, landscaped courtyards
2 all the way down.

3 This one was not viewed as acceptable by the
4 neighborhood. The height of the building was eight stories at
5 that time. And the wings, not ten stories as we've heard. The
6 ten-story section was setback along the tracks.

7 The design at that time was a Mansard roof.
8 That's a long time ago but this was the initial submission,
9 which had a sloped glass Mansard. And the character of this
10 building was the background building we looked for.

11 In response to all of the groups, and we worked
12 with everybody, the Office of Planning, Fine Arts Commission,
13 many preliminary informal meetings with both groups and with
14 other groups as well, we presented to the neighborhood.

15 We had a lot of negative comments from the
16 neighborhood which led us to go away from the Mansard roof and
17 we began to do setbacks. This overall site plan, in context,
18 Union Station, the Judiciary Building, F Street, 2nd Street, the
19 elevated H Street, in this small plan you're looking at here, is
20 the result.

21 And there's a big difference, we think. And we
22 think this is really a great building now for this area. We
23 really have worked hard at it and we had good testimony from the
24 Office of Planning. We appreciated that. We were responsive.

25 We can't respond to some things that we can't do.

1 And the SEC's mandate that they have this amount of glass, have
2 these -- this magic number we spoke of early, as 45 feet, 30
3 feet, 45 feet, is a generally, more than generally, it's a
4 universally accepted standard now for good office space. Not
5 just for the SEC, and it has been adopted, I believe, by the
6 GSA.

7 And in a previous project, we were involved with
8 that. So the building now has, starting on F Street has the
9 elliptical entrance which reflects the circle and has a setback
10 at the seven-story height all along F Street, sets back to the
11 eight-story, rises up one story, and returns to the west with
12 the spine of the building remaining. A new stepped facade
13 facing the circle to show the relationship and to lower the
14 evident height of the building.

15 Each of these courtyards now has a trellis and a
16 setback area at the corner and the middle of each of the
17 segments of the building for planting. So that the concern for
18 having so much going on on the sidewalk, the planting and the
19 beds are really tucked into the setbacks.

20 And the vines grow up the building. And the
21 trellis is a very narrow projecting element at the second story.

22 The base of the building is all stone with a colonnaded effect.

23 And the colonnade runs across the courtyard, leaving an opening
24 in the middle of the courtyard.

25 CHAIRPERSON MITTEN: Can we get more, perhaps, to

1 responding to specific issues rather than just a rehash of the
2 design.

3 MR. QUIN: Yes. Well, I think actually he's
4 covered that.

5 MR. KINSELLA: All right.

6 MR. QUIN: If you have specific questions, then
7 we'll have him available.

8 MR. KINSELLA: The big element of the
9 neighborhood and the setback at the middle was very important to
10 everybody on the Fine Arts Commission.

11 MR. QUIN: And I think Phil, that's basically
12 presented by amendment which was submitted to the Zoning
13 Commission.

14 MR. KINSELLA: Yes.

15 MR. QUIN: So unless there -- we'll come back to
16 questions.

17 MR. KINSELLA: Okay.

18 CHAIRPERSON MITTEN: Thank you.

19 MR. QUIN: Thank you. Our next witness is Art
20 Von Roemer, from J.A. Jones/Tompkins, General Contractor, and he
21 will cover essentially two questions. One, there's been
22 discussion of the proposed construction truck route and just
23 wanted to briefly go over that and to indicate that if there's
24 any other route as they work with DPW, they'd be glad to use.
25 It's a matter of on-going process and if DPW thinks it's better

1 to go a different way, we'll go a different way.

2 MR. VON ROEMER: I'm Art Von Roemer. I'm
3 Construction Executive for J.A. Jones/Tompkins. The board I put
4 up is our proposed traffic routing for trucks entering the site
5 and leaving the site. It's been worked out over a period of
6 weeks in discussions with a number of people.

7 We've chosen it as the best route to get into and
8 out of the project, going past the fewest number of houses and
9 getting us in a most direct path. As Mr. Quin said, we're open
10 to suggestions on other ways of doing it. We've looked at just
11 about everything there is and this is primarily the best one to
12 do it.

13 As you notice, there's no traffic at all on F
14 Street or G Street. For your information, I was also the
15 Construction Executive on construction of the Thurgood Marshall
16 Building so I'm aware of the problems that the neighbors talked
17 about about traffic on F Street.

18 We did have one or two trucks that were misguided
19 and entered that street and they were taken care of in a
20 disciplinary action. But our main truck traffic also did not
21 enter F Street and G Street. Most of the problems there, as
22 those witnesses have said, regarded the buses. And that's where
23 all their problems came from.

24 We don't expect any additional problems on this
25 project any more than we had on the Thurgood Marshall job.

1 As far as the issue of moving materials and
2 debris on the rails, we did some extensive research. We
3 contacted a company that would be able to handle the material if
4 we got it on the rail. We did pricing with those people, talked
5 about logistics, time tables, and things of that nature.

6 The next step was to talk to CSX who owns the
7 rails outside of the Union Station Yard, made contact with them
8 and got the appropriate information from them: the number of
9 trains we'd need, the number of cars, and things of that nature,
10 how they'd moved.

11 The next step was to talk to Amtrak itself, who
12 runs the yard. At that point, we reached a stumbling block
13 because Amtrak would not allow any other freight traffic, any
14 other, excuse me, freight traffic in the yard with their
15 passenger traffic. In fact, what they told us was that there is
16 no available space for the cars.

17 Amtrak's commitment is to moving people and their
18 position is that they would not be able to provide quality
19 services to their customers with the freight trains entering the
20 station and using their rails. And so that was the extent of
21 our research.

22 MR. QUIN: Madam Chairperson, that concludes Mr.
23 Art Von Roemer's testimony. The next three witnesses, actually
24 two, we had not planned to call unless you wanted to question.
25 They will be here for questions, namely the economic expert, Mr.

1 Bolan and also Mr. Asadooman is here on retail. That hasn't
2 seemed to be a particular major issue here but --

3 CHAIRPERSON MITTEN: Right.

4 MR. QUIN: -- If you have a question, they're
5 here. And also, there was an earlier discussion about the
6 traffic but I think Mr. Wells covered the entrances on F Street
7 in his direct testimony. I don't know that there's any -- and
8 then you had the Department of Public Works come in later and
9 explain what their position is.

10 CHAIRPERSON MITTEN: Yes.

11 MR. QUIN: And if you remember, they removed
12 their objection to that.

13 CHAIRPERSON MITTEN: Yes.

14 MR. QUIN: So I'm not proposing to call him now
15 unless there's some specific questions. Then we also with
16 regard to the preconstruction survey, you asked some questions
17 earlier. I think, actually, Mr. Hood asked the question on what
18 additional information was there or maybe it was Mr. May, I
19 don't remember from whom the question came. But I do remember
20 the question.

21 Our ECS, Ltd. is here if there are further
22 questions on the technical rationale for why it's 200 feet
23 versus 150 or any more. I've not proposed to bring them back
24 either unless you want to hear from them.

25 CHAIRPERSON MITTEN: Okay.

1 MR. QUIN: On the next issue, the Apex
2 Engineering, that was the issue that I raised an objection to
3 earlier concerning different points and the initial discussion.

4 And I believe that that is not within the scope of the Zoning
5 Commission's jurisdiction or authority to deal with subsoil
6 conditions.

7 Any matter of right development is going to
8 occur. But if you do want to ask questions, they are prepared
9 to address those with a letter which we have prepared to submit
10 to the Commission.

11 It's like submitting information that you don't
12 believe ought to be in the record because the issue shouldn't be
13 in there in the first place.

14 But it's difficult -- we just want to make sure
15 that we've covered whatever you wish us to cover. We can
16 introduce that particular letter that's responsive and we can
17 also call Mr. Peter Grenholm to discuss that issue.

18 CHAIRPERSON MITTEN: Let's see if we get any
19 questions from the Commission on that.

20 MR. QUIN: All right. Our last witness is Mr.
21 Steven Sher and we've saved, oh no, don't tell me we're down to
22 three minutes for him.

23 CHAIRPERSON MITTEN: It's too much time. He
24 doesn't know what to do with three minutes.

25 (Laughter.)

1 MR. QUIN: Well, we were kidding him tonight and
2 we were going to say, "You certainly have more than three
3 minutes tonight." Because he is, in many ways, going to hit
4 some of the issues that have been raised dealing with the
5 transition, particularly from Union Station going to the east,
6 which I think has been -- in actuality, that's probably the only
7 major issue that I see that the neighbors feels most strongly
8 about. How does it relate to the area going to the west?

9 CHAIRPERSON MITTEN: Yes.

10 MR. QUIN: Or to the east.

11 CHAIRPERSON MITTEN: And the time was a target,
12 it wasn't -- you're not being held to 30 minutes. So --

13 MR. QUIN: I'm trying to move as fast as I can,
14 as you can see.

15 CHAIRPERSON MITTEN: I understand and I
16 appreciate it.

17 MR. QUIN: And I do have the time for a closing
18 argument, that's also -- but that only takes about three
19 minutes.

20 MR. SHER: There goes half my time already.

21 (Laughter.)

22 MR. SHER: Madam Chair and Members of the
23 Commission. I would like to address five separate points, some
24 of them related, some of them not. Those points are the nature
25 of the previous approval of development on the site, the

1 question of amenities, the Comprehensive Plan, the relationship
2 to the area across 2nd Street, and the density that we're
3 "gaining" under this PUD.

4 The nature of the previous approval. Back in
5 1990, the Office of Planning approved the large tract review
6 process and then subsequent to that, the Board of Zoning
7 Adjustment approved the special exception to reduce the parking
8 for a development on this site under the C-M-3 zoning.

9 Those approvals are Exhibits H & I in our
10 original application book. They're already in the record. But
11 what I have to pass out to you tonight are four pieces of the
12 plans of those projects, just so you have them in front of you.

13 A site plan, the 2nd Street elevation, a model, and a
14 perspective.

15 I'm not going to belabor the point. You can look
16 at them at your leisure. The staff is going to hand them to
17 you. The point of this is that building, as proposed and
18 approved, was the same height as the proposed building here.

19 It was a 6 FAR building which was permitted as a
20 matter of right under the C-M-3 district. And it had no
21 discussion of nor inclusion of nor requirement for any amenities
22 whatsoever. Because the project was done as a matter of right.

23 So we then turn to the question of amenities.
24 And as the Commission knows and as I have expounded on on many
25 previous occasions, there is a requirement in the regulations

1 that tells you to judge, balance, and reconcile the relative
2 value of project amenities and benefits offered, the degree of
3 development incentives requested, and any potential adverse
4 affects.

5 The amenities must, therefore, meet that test of
6 policy on the one hand and proportionality on the other. What
7 are we getting versus what are we giving in sort of plain, bald
8 language.

9 Mr. Quin has given you the legal position on the
10 question of amenities and we've handed that to you in other
11 cases. We filed it earlier today and you've had it before.

12 Mr. Braunohler has gone through the list of
13 amenities and benefits and that's also in the record and was
14 submitted either the last time or the time before that. I'm not
15 going to read these all again. You have them.

16 One of the issues that's come up with this
17 question of amenities is the fact that this building is going to
18 be built in stages. And there seems to be this concern that a
19 lot of the amenities or some of the amenities are in the third
20 phase of the project.

21 And the one that gets pointed out more than any
22 one else is the connection to H Street. Well, absolutely right.

23 You don't have the connection to the H Street overpass until
24 you build Building 3. But as we've indicated and Mr. Braunohler
25 just referenced, we are providing a way to get to H Street.

1 It's sort of a rectangular way so it's no longer
2 to go up 2nd to G to 3rd to get to the intersection of 3rd and H
3 which is the first place you have anything on H Street, than it
4 would be to go up 2nd Street to H, which you can't get to H
5 because it's then 20 feet up in the air. But you can still get
6 there. And we're going to facilitate that.

7 But if we built only the first phase of the
8 project, then we've built only approximately 45 percent of the
9 density and we only have 45 percent of the impact. And if we're
10 only providing 45 percent of the amenities, then there's a rough
11 proportionality of the amenities that are being provided with
12 the phases of the projects.

13 We believe, I believe, having looked at that list
14 of amenities, Exhibit A, that they are more front loaded, that
15 they are more forward-weighted in proportionality. And that's a
16 difficult thing to sort of get at exactly how much occurs in
17 each phase with relations to that. Obviously, the landscaping
18 in front of each phase occurs when that phase gets built.

19 But the notion of the minority business and DOES
20 employment things, some of the information that Mr. Von Roemer
21 submitted the last time in terms of the jobs that would be
22 created, all that begins to happen up front.

23 It looks to me that there are relatively more
24 amenities and benefits associated with the beginning of the
25 project than there are in terms of the total proportion that

1 gets built. But again, remember, if all that we build at the
2 outset is Phase One, we're building less than 3 FAR worth of
3 density. So it is a much smaller percentage than the
4 development as a whole.

5 Comprehensive Plan. In the previous report that
6 I submitted to the Commission at whatever that first hearing
7 date was, November 8, I guess, pages 11 through 17, I went
8 through the Comprehensive Plan, all the elements. And I'm not
9 going to repeat all that tonight.

10 But clearly the plan itself provides that the
11 land use element is to be given greater weight than any other
12 element, including the Ward 6 Plan.

13 The Comprehensive Plan Generalized Land Use Map,
14 the first map that was adopted by the Council in 1985, showed
15 this site as mixed use, medium density commercial, and
16 production and technical employment. PTE is the closest thing
17 we have to an industrial-type category on the Generalized Land
18 Use Map.

19 When the medium-high density category was created
20 in 1989, it didn't exist in 1985, it was created in 1989 in the
21 Comprehensive Plan Amendments Act of 1989, this site, as well as
22 much of the surrounding area to the northwest and west was
23 changed to mixed use medium-high density commercial/PTE.

24 2nd Street has been a hard boundary line for those
25 planning classifications from the very beginning of that map.

1 You see one set of classifications applying on the west side of
2 2nd Street and another set applying on the east side of 2nd
3 Street.

4 On the west side, this site, since 1985, has been
5 designated for mixed use commercial and PTE. It has never been
6 a site designated for residential. In fact, the existing
7 industrial zoning prevents residential development from
8 occurring on that site.

9 With respect to the Ward 6 element, because I
10 don't want to suggest that by -- I don't want you to believe
11 that by suggesting you need to look at the land use element
12 first, that you don't also have to look at the Ward 6 element.

13 But I believe that what we are doing is very
14 specifically consistent with the Ward 6 element. And it's funny
15 how people on two different sides of an issue read the same
16 section and say, "Oh that supports my position."

17 But let me cite three specific provisions of the
18 Ward 6 element. In the urban design piece, now of Ward 6
19 element, ensure that redeveloped and new structures in Ward 6
20 commercial corridors strengthen the urban design image of those
21 areas and relate to adjacent residential neighborhoods.

22 Well, 2nd Street is kind of a peculiar animal
23 here. We all know the H Street corridor. We know Capitol Hill
24 and the Mass. Avenue piece of commercial. 2nd Street is a
25 commercial street, both under planning and zoning designations.

1 But it doesn't really read the same way as those other
2 corridors.

3 Yet we believe that the building that we've
4 designed and the project that we're proposing here clearly
5 relates to strengthening that urban design image by replacing
6 that parking lot, by having a building which has four distinct
7 faces, north, south, east, and west, and which has been designed
8 to relate to those four distinct faces, Union Station, Thurgood
9 Marshall, 2nd Street, H Street overpass, rail yard.

10 That was somehow five out of four, but I think
11 you get the point. That we have related to the area within
12 which this building sits on all sides.

13 Another piece of the Ward 6 element -- locate the
14 more intensive and active land uses in areas of Ward 6 that by
15 virtue of existing and planned infrastructures can accommodate
16 and support those types of uses. Well, here we are. Right next
17 to Union Station. Probably the greatest rail hub of any
18 location in the city with the combination of Amtrak, Mark, VRA
19 and through the station on the other side, Metro.

20 Well, what other kind of infrastructure can you
21 have that supports these kinds of uses? One more quote:
22 "Redevelopment of the Ward 6 portion of the northeast number one
23 special treatment area should proceed as a primary and secondary
24 commercial area. An appropriate but flexible office environment
25 must be created that offers and opportunity and challenge to

1 suburban and other office developers to locate and establish
2 business in the District and to serve as an overflow area for
3 downtown development."

4 Okay, here we have the SEC. At one point in
5 time, they were thinking Silver Spring. They even sort of made
6 a tentative step in the direction of Silver Spring. And yet we
7 have an opportunity to put them back here, which I think, again,
8 is consistent with what the Ward 6 Plan is saying.

9 Back in 1996 and 1997, the Zoning Commission
10 examined the zoning in this Union Station/North Capitol Street
11 area in great detail. And it determined to change the zoning of
12 a lot of that area.

13 I believe this was a question that Commissioner
14 Mitten raised the other night, particularly in the area on the
15 west side of the tracks going north up North Capitol Street, all
16 the way up to Florida Avenue. That area was changed to C-3-C.

17 Why was this property left C-M-3? It wasn't
18 because it wasn't considered, because the Commission very
19 specifically considered it and, in fact, CSX, the owner at the
20 time, came in and said, "Please make us C-3-C like everybody
21 else."

22 And the Zoning Commission said, "No. Development
23 on this site is controlled by the large tract review and the
24 BZA. That was approved back in the early 1990's. We're not
25 going to take this property out, make it C-3-C and let anything

1 that could happen as a matter of right under C-3-C happen."

2 So that was why it was left C-M-3. Not because
3 it wasn't thought to be an appropriate site for commercial or
4 office development. But because that development, in the four
5 panels that I handed you at the outset, had been approved and
6 was set out there as a control.

7 Now what we have here now is a PUD which gives
8 you at least that much control and probably more so. So we're
9 not suggesting that this site be zoned C-3-C and we just walk
10 away and do whatever we want.

11 As you know in the PUD, we are committed to 39
12 pages of drawings and whatever level number of conditions you
13 decide you want to put on this project. And that's what we have
14 to do.

15 So we're here, we have put the whole project
16 before you in the one single process rather than go back to the
17 Office of Planning or the Large Tract Review and then go back to
18 the BZA and do the parking special exception because I really
19 don't think anybody wants us to build 2,000 parking spaces on
20 this site and have everybody in the whole world who wants to
21 drive.

22 So what we have here is what we believe to be the
23 right number of parking spaces that strikes the balance between
24 accommodating the folks who are going to drive and will come to
25 our site and not encouraging everybody in the whole world to

1 drive, given the access to Metro, the bike path and all the
2 other incentives to not have single occupancy vehicles.

3 Putting aside the Comprehensive Plan and the
4 existing zoning, which as a technician I'm loathe to do. If I
5 just look at this site in sort of the abstract, and say, "Is
6 this the right development for this site?" I have to conclude
7 that it is.

8 Because it is a site that, again, has to fit
9 within those four different contexts. It is connected or will
10 be connected to Union Station so you can go directly from our
11 site into that property where you can access all the transit
12 services that are available.

13 It is within the stepping of height, and I'm
14 going to come back to that in probably another minute or so, so
15 I guess I should just keep right on going.

16 It has been designed to focus the transition from
17 Union Station Rail Yard, high density, high activity, stepping
18 down to the east as the building proceeds. This building, this
19 property has been zoned C-M-3 since 1958. Now, in part that
20 reflects an understanding of its relationship to the rail yard
21 at one point.

22 It hasn't been used for railroad purposes for
23 quite some years, but that zoning designation has been there, as
24 the same designation applies to the rail yards behind the
25 station.

1 The neighborhood directly across the street, it's
2 not a historic district, it's not included within the Capitol
3 Hill Historic District. We have a map that shows that if you
4 need to see it, but it's not.

5 The Historic District is south of F Street. So
6 from F to H, directly across from us, we're not in a historic
7 district. Ninety-five percent of that frontage on the east side
8 of 2nd Street is non-residential. There are a couple of houses
9 in that whole stretch.

10 I, quite frankly, think a couple of them that are
11 houses are maybe even being used for offices but I can't say
12 that for sure. So, I figured -- I gave the benefit of the doubt
13 and said anything I wasn't sure about, I called residential.

14 I still wound up with 95 percent of that frontage
15 going either -- and you can count that either from F to H Street
16 or from Mass. to H Street because I looked at it both ways.
17 It's not residential. It's commercial or institutional in the
18 case of a couple District properties or parking lots.

19 Across from the site, on the east side of 2nd
20 Street, the nearest residential zoning is approximately 100 feet
21 back from 2nd Street. So 2nd Street, which is 90 feet wide, 100
22 feet worth of C-2-A, then you get to the R-4.

23 We've prepared a section that I would like to
24 submit to you. This is really not any new information but it
25 just sort of puts it in one place. And staff will hand this --

1 you can look at it directly so you won't have to try to figure
2 out what the heck is he saying.

3 On the left-hand side of the drawing, and this is
4 a cut basically through the courtyard of Building 1. On the
5 left-hand side of the drawing, you see the height of our ten-
6 story portion of the development which is 115-1/2 feet.

7 We step down to a roof height that's 90 feet.
8 Then when you get to the 2nd Street facade, and this is -- you
9 can see this is the wing of Building 1, behind the courtyard,
10 you're looking north through this cut, that roof height is 78
11 feet, which then steps down after a 90-foot wide street, to C-2-
12 A zoning which allows a height of 50 feet and conceivably some
13 penthouse on top of that but whether you have a penthouse or not
14 is debatable.

15 And then as you go further to the east beyond
16 that 190-foot wall or line of the wall of our building, you get
17 to R-4. And that, we've just drawn it out to 3rd Street. It
18 obviously keeps on going further to the east. The further away
19 you get, the less question there is of the impact of height.

20 Add to this the fact that if you looked to the
21 west of our building, the height of the top of Union Station is
22 about 23 feet higher than the height of the top of our tenth
23 floor. And the height of the parking garage is just about the
24 same as the top of our tenth floor.

25 So we've taken a height profile that either

1 starts at the same height or a little bit higher, taken it
2 across, stepped it down, taken it -- not all the way to 2nd
3 Street but stepped it down again, brought it out to 2nd and then
4 the height steps down to 50, and then to 40.

5 So we believe that what we have achieved by this
6 design is to accomplish that transition, to move the height from
7 the higher on the one side to the lower on the other side.

8 We have gone at great lengths and talked about
9 the design and massing of the project. And much has been made
10 about the 34-foot setback. Well, we don't have a uniform 34-
11 foot setback. We don't. We have a setback that averages 56-1/2
12 feet. That goes from face on line on some parts to as deep as
13 more than 150 feet on other parts, with setbacks that range from
14 11 feet to 20 feet to the shallower courtyard to the deeper
15 courtyard.

16 So is that a uniform 34-foot setback, no. But we
17 think it provides a usable series of spaces that react to the
18 changes in the depth of the site, the depth of the building and
19 which provide a variety of appeal as you look at the site going
20 north along 2nd Street. I'll just leave that at that point.

21 The last issue I want to talk about is whether or
22 not we're gaining any density under this PUD. Our FAR is about
23 5.8, that's 47,000 square feet less than the current C-M-3
24 matter of right which is 6 FAR.

25 Under the 6.5 FAR, excuse me, under the C-3-C

1 district, we could go to 6.5 FAR which adds another 100 plus
2 thousand square feet. But if you just compare it to what is
3 permitted as a matter of right under the existing zoning, we're
4 less than that.

5 Now, could we build that 6 FAR in a 90-foot high
6 building on this site? Absolutely. There are many, many
7 examples of buildings built in the C-3-C district at 6.5 FAR
8 within 90 feet. That don't need to have any extra height or
9 anything beyond what the normal matter of right zoning allows
10 for to get to that height.

11 And I'll just give you a couple of examples. The
12 former PEPCO headquarters building, 1900 Pennsylvania Avenue, C-
13 3-C matter of right building. Occupies the whole square, pretty
14 much goes property line to property line on all four sides.
15 Eight-story building within 90 feet, 6.5 FAR.

16 The building at 2000 L Street which goes the full
17 block length from 20th to 21st on the south side of L. That's a
18 site of about 52,000 square feet. It's more than 400 feet long.
19 It's a 6.5 FAR matter of right C-3-C building.

20 The square bounded by 19th, 20th, L and M Streets.
21 That's a square that's not in a single ownership. It's roughly
22 300 by 600 feet in dimension; 300 feet in the east/west
23 direction, 600 feet in the north/south. It's a series of office
24 buildings.

25 But in total, it essentially, with the exception

1 of the Smith & Molesky Restaurant Building, essentially they're
2 all matter of right 6.5 FAR buildings. There's a 10-foot wide
3 public alley that cuts through the middle of the square. But
4 other than that, what you've got is a row of buildings, and a
5 row of buildings, and a row of buildings.

6 It is feasible, likely, possible. It has been
7 accomplished. It can be accomplished. And it will be
8 accomplished to get a 6-1/2 FAR building within 90 feet. And
9 you can certainly get a 6 FAR building within 90 feet.

10 I would maintain that under the current
11 regulatory scenario, we have the absolute right to measure the
12 height of this building from the overpass. And we're going to
13 submit a memorandum to that effect that sets out our position as
14 a matter of law and a matter of the Regulations. However, in
15 any event, submit the memo. I'll just put it in the record.

16 If you measure the height of the building from F
17 Street, which we can do under C-3-C and the PUD, we're at 115-
18 1/2 feet. We've been over those numbers time and time and time
19 again.

20 I believe that we have the right to measure from
21 F Street. But our whole case isn't built necessarily upon our
22 being able to do that. However you look at where we measure the
23 height from, it's clear from this section and from all of the
24 other plans that we've submitted, that we reach that maximum
25 height only on the west side of the project.

1 There are no ten-story wings coming out to 2nd
2 Street. Well that maximum height, whether it's 115-1/2 or 90,
3 is reached only on the west side of the building. So what we
4 have, as the trade off for that height, again, measure it from
5 wherever you want to, is the open space that is otherwise
6 provided in this design which you would not be provided if you
7 go back to my example of Square 117.

8 And in my original report, on page 10, I went
9 through all those computations on amount of public space, lot
10 occupancy, and all the open space that's in the site. I'm not
11 going to repeat that again because you all have it already and
12 I've way gone over my two minutes. And Mr. Quin doesn't have
13 anything left.

14 CHAIRPERSON MITTEN: Yes, I'm sorry we turned the
15 clock off.

16 (Laughter.)

17 MR. SHER: So you gave me a chance, and I took
18 it, and I apologize.

19 MR. QUIN: That does complete our direct
20 testimony. We still have the opportunity for closing argument -
21 -

22 CHAIRPERSON MITTEN: Yes.

23 MR. QUIN: -- Which is going to be very brief if
24 we get there.

25 CHAIRPERSON MITTEN: Just don't let Mr. Sher

1 deliver it and we'll be fine.

2 MR. QUIN: I'm not going to let him do that. But
3 we do --

4 MR. SHER: Once in a while.

5 MR. QUIN: -- But we are all available for cross
6 examination at this point.

7 CHAIRPERSON MITTEN: Okay. Questions? Mr. May?

8 COMMISSIONER MAY: Okay, I'll go first. Let's
9 see. I'll try to keep this as coherent as possible. The
10 original building that we saw shown here, which, I guess the
11 original proposal, it's hard to read from the scale of that
12 plan, but did it show a front, a setback, that was more similar
13 to the Thurgood Marshall Building because it looked a heck of a
14 lot closer than the current design? So that setback --

15 MR. KINSELLA: Okay, it did not. This is the
16 same 30-foot setback --

17 COMMISSIONER HANNAHAM: Mr. May, if I may
18 interrupt you. I think you'll find the Thurgood Marshall
19 Building drawn differently on the subsequent drawings. In other
20 words, I think they've got the wrong facade on this initial
21 sketch.

22 MR. KINSELLA: That could be.

23 COMMISSIONER MAY: Oh, I see. You're right.
24 You're right.

25 MR. KINSELLA: The drive going down in and the

1 curve in, I think was an error on this.

2 COMMISSIONER MAY: Okay.

3 MR. KINSELLA: It was actually setback further to
4 allow that entrance drive to work for them.

5 COMMISSIONER MAY: Okay. That clarifies it,
6 thank you.

7 The -- I'm not sure who can answer this question
8 best, but I am still confused about the issue of the setback and
9 how it relates to security for the building. It's very, very
10 difficult for me to believe that in the current environment that
11 there is not a significant concern for the front of the building
12 being that close to the street.

13 And I'm not -- I'm much less concerned about
14 planters and whatnot being placed there as seems to be vogue and
15 our own Agency has certainly done its share of putting out
16 planters and Jersey barriers and whatnot. So I know how well
17 they can be used. It seems to be it must be a concern and I
18 don't understand why it's not for the Agency.

19 MR. QUIN: Two parts of the answer, I guess.
20 First is, there's been some discussion about the use of public
21 space. Every building that I know of uses public space,
22 including every single-family dwelling in the District of
23 Columbia.

24 And in office buildings, if you look at the
25 public space, you do utilize it for different types of security.

1 And that, as Mr. Parsons knows, there's a task force that's
2 been very --

3 COMMISSIONER MAY: I have no question about that.
4 We use public space.

5 MR. QUIN: So that gets to my first point.
6 Second point is the answer of SEC.

7 MR. SHERMAN: We are concerned about the security
8 of our employees. But we are not going to operate in a bunker.
9 That's management's decision. We want to work in commercial
10 office space.

11 We've asked Dreyfus, their engineering and
12 construction people to give us costs on beefing up the floor
13 above the garage, the walls around the loading docks and the
14 mail room. And putting mylar on the windows and those types of
15 issues to secure the building.

16 We have no intention at this time of putting
17 planters out in front in the public space. We feel we can
18 provide security for the building as is drawn.

19 COMMISSIONER MAY: I guess maybe I was
20 misunderstood. I'm not suggesting that you need planters,
21 although if you want them, we'll probably have some extras
22 before too long. I hope we do anyway.

23 My concern is just the distance. And the
24 distance that you get from the street is an important
25 consideration in the security design and I -- you have something

1 with this site that other buildings downtown don't have in the
2 ability to achieve the maximum FAR and not occupy the entire
3 site. And so you can get more setback conceivably.

4 And so I don't know why that's not a more
5 important criteria for the SEC.

6 MR. SHERMAN: Well we've just contracted with
7 that architectural firm. The contract will be signed this week,
8 I believe. They're going to look at that and make
9 recommendations to us. But right now, we feel that we -- the
10 building, the way it's designed, is defensible.

11 COMMISSIONER MAY: Okay. The next question I
12 have has to do with the traffic flow, the construction traffic
13 flow. And this issue has been raised before and I don't quite
14 recall the answer or that it was satisfactorily answered.

15 If trucks are going to be going up or going north
16 2nd Street, shifting over to 3rd Street and then making a left
17 turn from 3rd Street onto Florida Avenue, that's a very
18 difficult turn to make in a normal vehicle with good
19 acceleration.

20 And a fully loaded dump truck is going to have a
21 lot of problems. And a lot of them is going to cause problems
22 for everybody. How is that going to be addressed there?

23 MR. VON ROEMER: We understand that it's a
24 difficult area and we've driven it and seen it and it is kind of
25 scary. And we discussed, in fact, this afternoon, we discussed

1 the possibility of having a flagman at that area. It wouldn't
2 just be a laborer with a flag, it would be more elaborate than
3 that.

4 But if traffic starts to back up there, if we get
5 truck traffic backing up there early in the operation, we will
6 take care of that. We will have to address it because we
7 understand exactly what you're talking about.

8 The problem of moving the route, it makes it
9 worse for either the neighborhood or traffic. And as I said
10 before, this is the best solution we have come up with. If
11 somebody's got a better one, we'll certainly look at it.

12 MR. QUIN: And will you constantly monitor this
13 with the Department of Public Works?

14 MR. VON ROEMER: Absolutely. In fact, they have
15 to approve it. If they have another recommendation, we'll
16 absolutely follow that.

17 COMMISSIONER MAY: Okay. It's going to be very
18 difficult. Okay. The last question I have is -- actually, I
19 think we've pretty much answered it.

20 MR. QUIN: Mr. May, let me just also point out
21 that the traffic and generation of traffic from this site is
22 true whether it's a PUD or not.

23 And what we're trying to do -- with the PUD, I
24 think we can put a condition in that even forces us to work more
25 closely with DPW. I think that's one of the benefits of a PUD

1 is that we can live up to certain conditions that we are
2 responsible for.

3 COMMISSIONER MAY: Okay. I have -- I do have one
4 more thing to say. It's not really a question, but it's a
5 comment. But the notion, Mr. Sher, wherever you are? The
6 notion of measuring the setback as an average --

7 (Laughter.)

8 COMMISSIONER MAY: -- Is not really very good in
9 that, I mean it's like measuring the average height of the
10 building or something like that. It just doesn't really work
11 the same way in terms of the impact of that building on the
12 street. And so it's questionable.

13 MR. SHER: We probably, just to point out, I
14 guess, when you look at the three reports you have from the
15 Commission of Fine Arts, one of the revisions that they really
16 wanted, more than any, was to break the facade along the 933
17 feet.

18 So from the standpoint of the relationship to 2nd
19 Street, at least the Commission of Fine Arts felt that that was
20 extremely important to have these deep courts and the breakage,
21 especially between now the two buildings and the third building.

22 COMMISSIONER MAY: Yes, I understand that. And I
23 agree that that -- I understand what they were doing and what
24 they were trying to achieve. It's the relative depths -- I mean
25 the fact that there's a break in it, it doesn't really matter as

1 much if it's 30 feet or if it's 100 feet.

2 And trying to consider it as an average makes it
3 -- the point loses some validity. The real point is how far off
4 the street the real face of the building is. And that's the
5 point I wanted to make.

6 CHAIRPERSON MITTEN: Any other questions? Mr.
7 Parson?

8 COMMISSIONER PARSONS: Yes, I have three. I
9 wanted to follow up on Mr. May's question on security and what I
10 think we've learned about security in this town is that a lot of
11 the security that is in place or being placed is there at the
12 request of the employees.

13 It is there, which doesn't really protect the
14 building, but does something for the morale of the people within
15 it. That is a lot of planters have been placed along
16 Pennsylvania Avenue and other places that really don't protect.
17 And the people in the security business know that.

18 But rather it's done for employee morale. So in
19 this case, you will be able to drive right into the front door
20 of the building, into the lobby. And I don't think you will be
21 able to withstand the pressure.

22 I mean today's management may say, "We're not
23 going to have a bunker mentality here." But I don't the
24 employees are going to let you get away with it. So I'm going
25 to ask you to do something. I hope you'll do it.

1 It's to let your architect take a look at this.
2 And say that if management changed its mind, here's what
3 security might look like along this facade. Because I have a
4 feeling it's going to be done in haste, it's going to be done
5 with Jersey barriers.

6 And the architect will be very upset with all of
7 us and I think at least at the entrances, you should be looking
8 at that. You don't need to respond tonight. But I really think
9 it's -- you know, GSA had an all day today and a half a day
10 tomorrow seminar on this very issue, on leased space and owned
11 buildings.

12 And it's just a product of our times. And I
13 think you should design for it as a worst case scenario. You
14 can respond to that but I don't want to have a debate with you.
15 I just think it's common sense.

16 MR. SHERMAN: I certainly appreciate your
17 comments, Commissioner. And we will have our architect look at
18 that and give us a report on that.

19 COMMISSIONER PARSONS: Thank you. Now I'm
20 confused over measuring height. What happened to Mr. Sher?

21 CHAIRPERSON MITTEN: You still there?

22 COMMISSIONER PARSONS: I'm confused. Mr. Sher,
23 in your report, at page 16, you have it memorized, no sense
24 getting it out.

25 (Laughter.)

1 COMMISSIONER PARSONS: You state that the Ward 6
2 Plan has a requirement or a section that would require any
3 building to be measured from F Street, excuse me, H Street.
4 However, the Capitol Hill Restoration Society claims that that's
5 an element of the Comprehensive Plan in their presentation.

6 So who's right here? Is it the Ward 6 Plan? Is
7 it the Comprehensive Plan? Or is it both?

8 MR. SHER: It's both.

9 COMMISSIONER PARSONS: Okay.

10 MR. SHER: I mean it is the Ward 6 element of the
11 Comprehensive Plan.

12 COMMISSIONER PARSONS: Okay. So how -- in your
13 paper that you just submitted, you make no mention of this as to
14 why --

15 MR. SHER: Yes, it's in there.

16 COMMISSIONER PARSONS: Oh, thank you. So you
17 have explained why your building is not inconsistent with this
18 aspect of the Comprehensive Plan?

19 MR. SHER: The Comprehensive Plan is not a self-
20 executing document unless and until the Zoning Regulations
21 and/or the Act of 1910 are amended, they are what they are.
22 Under the Regulations and the Act, where a property fronts on
23 more than one street, one may select whichever street --

24 COMMISSIONER PARSONS: I understand that.

25 MR. SHER: -- Affords the greatest advantage to

1 measure the height. And Mr. Quin would say as a matter of law,
2 under the Act of 1910, that we have to take the measurement from
3 the H Street overpass because it says shall rather than may.

4 COMMISSIONER PARSONS: No, you don't need to do
5 that.

6 MR. SHER: I say we can pick whatever one.

7 COMMISSIONER PARSONS: All you need to do is
8 explain, and I hope you have, is why this is not inconsistent
9 with the Comprehensive Plan.

10 MR. SHER: Well, as we've said, whether you
11 measure it from here or measure it from there, we believe we
12 comply.

13 COMMISSIONER PARSONS: The Comprehensive Plan
14 says you can't. That's what I'm looking for is a legal argument
15 about this paragraph.

16 MR. SHER: I think it's in our -- it's in our
17 memo.

18 COMMISSIONER PARSONS: Okay, that's all I wanted.
19 Thanks.

20 Now let's talk about setbacks because I think the
21 citizens have made a point here tonight that is worthy of some
22 examination. And what I wanted to ask you about is a very
23 confusing document that came in in November, confusing to me,
24 having to do with the backyard and an easement and a height
25 restriction and some stuff. And I don't know who's here to

1 answer that.

2 But is it possible, as the citizens have
3 suggested, to cantilever out over all of that circulation space
4 to the rear and make up, if you will, some of the density, the
5 40,000, 50,000, 60,000 square feet that would be lost if you
6 went back to align yourself with the Thurgood Marshall Building.

7 MR. QUIN: No, I think that the answer is there
8 cannot be any cantilevering under the SEC RFP if I'm not
9 mistaken. And that would be, even if it were in agreement with
10 and renegotiated with GSA.

11 MR. SHERMAN: Part of the requirement of the
12 solicitation was that there would be no cantilevers. Part of
13 our security plan would be no cantilevered space around the
14 building so that if a vehicle was driven in there with a bomb,
15 it would devastate the building. If there's no overhangs, no
16 cantilevers, it would prohibit that.

17 COMMISSIONER PARSONS: Well what are these on
18 this drawing? Aren't these cantilevers? What? That's what I
19 mean by cantilever. More of this kind of relief on the west
20 facade of building.

21 MR. BRAUNOHLER: That's not the SEC space.
22 That's the north end of the building.

23 COMMISSIONER PARSONS: I guess I am confused.
24 This is not part of Building No. 1?

25 MR. BRAUNOHLER: No, that's Building No. 2 that

1 you just pointed to. And Building No. 3 is what you're pointing
2 to now.

3 COMMISSIONER PARSONS: So it's SEC that is -- in
4 other words, SEC would not occupy this kind of space shown on
5 this diagram. I'm looking at the west elevation No. 7 on 8/21.
6 We're looking at it.

7 MR. BRAUNOHLER: That's correct. We put
8 specifically required no cantilever space for security purposes
9 on the building.

10 COMMISSIONER PARSONS: So if you've got an option
11 for expansion, you wouldn't want to be in this space then, would
12 you? I mean, do you have options for expansion --

13 MR. BRAUNOHLER: Their expansion option doesn't
14 fill that entire building so we would work around the parts of
15 the space that are unacceptable to them. That building is
16 considerably larger than their expansion option.

17 COMMISSIONER PARSONS: Okay. So then if we're
18 going to study setbacks, which I'm going to suggest as the
19 citizens have directed, the only place you can make up space is
20 in the courtyards, as I assume?

21 MR. BRAUNOHLER: Phil, you want that one?

22 COMMISSIONER PARSONS: And you need to get 60,000
23 square feet or so.

24 MR. KINSELLA: That's correct. The courtyard
25 spaces or increasing the height of the building. And the

1 courtyard spaces, if we build those out to make up space, we
2 exceed the depth to skin ratios and lose glass to floor area
3 ratio.

4 COMMISSIONER PARSONS: Well how much trouble
5 would it be to do these brief studies? I don't mean to redesign
6 the building as much as to have the computers deal with it.

7 I'm trying to see what this would look like set
8 back another 30 feet to align with Thurgood Marshall.

9 MR. KINSELLA: We had done some studies which
10 were presented, I believe, in slide form the first evening by
11 Mr. Roche.

12 COMMISSIONER PARSONS: Oh.

13 MR. KINSELLA: And those studies showed the full
14 block out and the dimensions that resulted.

15 COMMISSIONER PARSONS: Oh, are those in the
16 record then?

17 PARTICIPANT: Yes.

18 COMMISSIONER PARSONS: Oh, I'm sorry. Well, we
19 don't need to do that then.

20 MR. KINSELLA: All right, good.

21 COMMISSIONER PARSONS: Thank you.

22 MR. KINSELLA: You're welcome.

23 MR. QUIN: However, Mr. Parsons, I think that
24 there's a theory that it could be set back, I'm mean that's one
25 discussion that's been -- that Mr. Roche went through. But Mr.

1 Roche did not address the requirements of SEC. And I think
2 that's the other side of it. And Mr. Sherman addressed that
3 earlier in his testimony.

4 I don't know whether you had any other questions
5 about it -- about what that does to their programmatic
6 requirements.

7 COMMISSIONER PARSONS: Yes, I heard his
8 testimony.

9 MR. QUIN: Okay, thank you.

10 CHAIRPERSON MITTEN: Mr. Hannaham?

11 COMMISSIONER HANNAHAM: Yes. I believe it was
12 Mr. Braunohler who mentioned something -- yes, on the amenities,
13 the establishment of the nine-member Advisory Committee. Could
14 you tell us a little more about that or has something been given
15 to us? There's a bunch of stuff I haven't read, I know. But
16 could you give me a sense of -- is there any precedence for
17 something like this out of a PUD?

18 MR. QUIN: Yes, we did handle that in many cases.
19 They're both BZA cases and Zoning Commission cases.

20 COMMISSIONER HANNAHAM: Okay.

21 MR. QUIN: We established a Liaison Committee
22 and, as we indicated earlier, the Applicant wants to have the
23 most inclusive group. In fact there was one group that was not
24 included earlier that requested, and I made that point at the
25 opening case.

1 COMMISSIONER HANNAHAM: Okay, this Committee
2 would then be -- this would be --

3 MR. QUIN: Bob, why don't you give specific --

4 COMMISSIONER HANNAHAM: What about a description
5 -- will it be a service throughout the whole PUD, throughout the
6 third building?

7 MR. BRAUNOHLER: Yes, yes. It would be in place
8 throughout the entire development. There is a description of
9 more detail in a document which was passed out in the first
10 hearing.

11 COMMISSIONER HANNAHAM: Okay.

12 MR. BRAUNOHLER: Called Public Benefits and
13 Project Amenities.

14 COMMISSIONER HANNAHAM: Okay, great. I'll go
15 back to that then. Thank you. The other question which
16 concerned me since it was first raised and this was in the last
17 hearing, was the crosswalk between Union Station and the
18 Thurgood Marshall Building.

19 And it seems as though that's still left in
20 limbo. It doesn't seem to be resolved. And I think that's
21 really a dangerous place for pedestrians.

22 MR. QUIN: That is one of the areas where we have
23 agreed with Thurgood Marshall to join with them and request a
24 narrowing of the pavement section of 1st Place, N.E., as it
25 leaves Columbus Circle and heads towards Station Place.

1 It's currently a three-lane-wide one-way street.

2 And we have written a letter to DPW and had discussions with
3 DPW as has Thurgood Marshall regarding narrowing that pavement
4 section and possibly signaling it to create a safer situation
5 for the pedestrian traffic there.

6 I think that we are very open to reasonable
7 constriction of the flow through there in order to slow the
8 traffic down but we do not support closing it off. I mean that
9 would have a major detrimental impact on the ability to get to
10 our building.

11 COMMISSIONER HANNAHAM: I think a signal would
12 certainly help. I've passed there many, many times and, you
13 know, it's due to the courtesy of drivers that people can
14 actually come and go. There is a sort of a retaining wall on
15 the Union Station side --

16 MR. QUIN: Right.

17 COMMISSIONER HANNAHAM: -- You know that goes up
18 to the public parking areas. Okay, well that's good. I'm glad
19 that's going to be looked at. Thank you.

20 CHAIRPERSON MITTEN: Thank you Mr. Hannaham. Mr.
21 Hood?

22 COMMISSIONER HOOD: Madam Chair, I just wanted to
23 ask, also piggy-back on what Mr. Hannaham was talking about, the
24 Community Advisory Committee. I think, this is just a
25 recommendation, I'm not going to push it too much. I believe

1 that there needs to be a spot here for those people that live in
2 the neighborhood who do not participate with SP&A or the ANC.

3 This is just a regular community person who may
4 not attend those ANC meetings and those SP&A meetings. I think
5 you need to look at this to see if we can put that normal
6 homeowner, who's most affected, who's really close to the site.

7 And we don't necessarily have to do it, but I'm
8 just throwing that out there for the sake of discussion and also
9 try to take that under advisement.

10 The next question, Mr. Sherman, I have -- I may
11 have missed this -- I've taken in a lot of information since you
12 said this. You were making a comparison between the amount of
13 glass used so you can get good accountants and good lawyers.

14 I've always known the bottom line to be the
15 amount of money. I just didn't understand that comparison.

16 (Laughter.)

17 COMMISSIONER HOOD: So if you could just, and
18 forgive me if I've misquoted you, but I didn't understand that
19 comparison at all, the rationale for using that much glass to
20 obtain good lawyers and good accountants. If you could explain
21 that for me?

22 MR. SHERMAN: In the past, we've had -- the SEC's
23 had trouble retaining attorneys and accountants. And while we
24 can't compete financially on a salary basis with private law
25 firms and private accounting firms, we can provide amenities,

1 one of which is most people like glass-windowed offices.

2 We found, we've surveyed our staff, and they
3 indicated they want windowed-offices. So what I was trying to
4 simply was that if we could provide those kind of amenities, we
5 could probably attract attorneys and maybe retain some of the
6 attorneys that we normally lose through attrition to private law
7 firms.

8 COMMISSIONER HOOD: If that works, let a lot of
9 us know so maybe some other people can try it, too.

10 MR. SHERMAN: All right.

11 COMMISSIONER HOOD: The other thing is also, Mr.
12 Quin, I think that when we get to final deliberations, I'm going
13 to be looking at whether or not you all -- I don't need to hear
14 from your civil engineer, but whether you all really need to
15 expand and look at expanding the scope of the areas which may be
16 affected or damaged.

17 I will tell you that Metro had done that some
18 years ago, in the Fort Tideman area. And that may be a model to
19 look at because people's homes, things cracked, homes were
20 shaken. And that's an issue that needs to be addressed.

21 So I will be also looking at that. You may need
22 to expand the scope more than the 200 feet in which I believe
23 you proposed at this time.

24 Thank you, Madam Chair.

25 CHAIRPERSON MITTEN: Thank you. I have one

1 question and then a few recommendations that I'd like the
2 Applicant to look at and include in the Proposed Finding of
3 Facts and Conclusions of Law.

4 Can you just clarify for me -- is the H Street
5 ramp going to be built sort of immediately with Phase 1 so it
6 will be used for the construction traffic as well as just the
7 traffic from Phase 1 itself?

8 MR. BRAUNOHLER: It's going to be built
9 contemporaneously with Phase 1. It can't really be used until
10 all the below-grade floors are built because it ties into the
11 actual structure of the building. So the ramp columns and
12 pilings will all be going in with the building columns and
13 pilings.

14 And as the building comes up out of the ground,
15 the ramp will be constructed. It will be certainly used for the
16 later stages of construction. But it's not going to be there
17 during the excavation phase. Because it's out of sequence. But
18 it is -- and once the building shell is up and the skin is going
19 on the building, that ramp should be usable.

20 And it will -- so it will clearly be usable as
21 soon as the building is finished.

22 CHAIRPERSON MITTEN: So then I take it for the
23 excavation for Buildings 2 and 3, because of orientation of it,
24 it won't be used -- the ramp itself will not be able to be used
25 to remove the excavated dirt?

1 MR. BRAUNOHLER: I have not -- you know, actually
2 we haven't thought about that but I don't see any reason why it
3 couldn't be. It probably would be a situation that we'd have to
4 study a little.

5 CHAIRPERSON MITTEN: Could you?

6 MR. BRAUNOHLER: Yes.

7 CHAIRPERSON MITTEN: Okay, so I'll put that on my
8 list of things that I would recommend that you take a look at.

9 MR. BRAUNOHLER: Okay.

10 CHAIRPERSON MITTEN: That would be one. Another
11 would be limiting the F Street garage entrance as has been
12 recommended to minimize the amount of cars going in and exiting.

13 Based on the configuration of the garage as I
14 understand it, it seems like the H Street ramp provides adequate
15 ingress and egress to other levels of the garage.

16 So I ask you to study what would result from the
17 limitation on the F Street garage entrance to just serving maybe
18 like the P-1 level in Building 1.

19 I'd ask you to take a look at restricting any
20 shuttle bus route that might be used by the SEC or any other
21 occupant to access from H Street exclusively.

22 I'd ask you to consider -- I understand you've
23 already considered what you think is the appropriate scope of
24 surveying for purposes of assessing property damage.

25 But whether or not you could devise something as

1 a guide to homeowners who might be outside of the area that you
2 are going to study that would say, this is a -- this is sort of
3 like a procedure of doing a sort of -- taking the burden on
4 themselves, to make sure that an adequate, sort of before study
5 would be conducted on their own. So that they can properly
6 document their properties. To the extent they want to take
7 responsibility on, you could provide the guidance for that?

8 MR. QUIN: Yes.

9 CHAIRPERSON MITTEN: And the two other things I
10 wanted the Applicant to consider is, and you know this whole
11 thing with the DOES and the LSDBE's and many things are evolving
12 with this Commission. I think we're refining the way that we
13 expect performance on the amenities.

14 So I would ask you to think of the DOES and the
15 LSDBE's as well as the Transportation Management Plan. How
16 could you make those results oriented?

17 Instead of just holding out a target and saying
18 we're aspiring to this, what kind of incentives can you built in
19 to say, "if we don't meet our target, this is going to happen."

20 Because the targets are so important. So give that some
21 thought.

22 And with that, if there are no more questions
23 from the Commission, we'll go to cross examination by Mr.
24 Edwards.

25 MR. EDWARDS: Thank you. My first questions will

1 go to Mr. Braunohler. You described the nine-member Community
2 Advisory Committee. And you described it in the context if
3 there is settlement in the house, it would come before this
4 Committee. But I'm confused because Mr. Quin has said that you
5 cannot agree to binding arbitration.

6 So if you can't agree to binding arbitration,
7 what can this nine-member Community Advisory Committee do in
8 settling someone's damage claim if there is the settlement you
9 described?

10 MR. BRAUNOHLER: We were not offering the
11 Advisory Committee as an arbitration board. We were -- I was
12 merely suggesting that it would be an easy way for a homeowner
13 to register a claim is to do it through this mechanism. The
14 claim would then be handled like any construction damage claim.

15 It would be given to the General Contractor to
16 deal with at the first level. And the General Contractor would
17 determine which subcontractor is involved and would deal through
18 the liability insurance coverage of that subcontractor or of the
19 General Contractor, depending on the circumstances.

20 And the first cut at determining damages and
21 compensation would be done most likely through the insurance
22 carrier.

23 And in the event that the insurance carrier's
24 determination is not satisfactory to the homeowner, then I would
25 say that normal contract law, common law, would come in to play.

1 MR. EDWARDS: So do I understand the nine-member
2 Community Advisory Committee would be merely a forwarding
3 mechanism and would take no action on the substance of a claim?

4 MR. BRAUNOHLER: I believe that in general,
5 that's the case. Now if there were a -- a situation were to
6 arise where there were repeated unhappy homeowners who were
7 claiming that their claims are not being dealt with properly, I
8 think this would be something the Committee itself would address
9 with the owner and the contractor. And we'd get into some sort
10 of a dispute resolution mechanism.

11 MR. EDWARDS: And would that be some form of
12 arbitration?

13 MR. BRAUNOHLER: I can't say. I don't know. I
14 can't sit here now and speculate as to what kinds of disputes we
15 might or may not get in.

16 MR. EDWARDS: Why couldn't the individual
17 homeowner that had sustained damage merely go directly to the
18 insurance carrier with his claim? What's the advantage of going
19 through the nine-member Community Advisory Committee?

20 MR. BRAUNOHLER: The advantage is that it's an
21 easier way for the homeowner to interface with the Contractor
22 and the Developer. That's the advantage. We're trying to make
23 it a user-friendly process. If you would prefer to go directly
24 to the insurance company, obviously that's always an option.

25 MR. EDWARDS: Let me change the subject now. I

1 believe you talked about 1st Place, a request to DPW to reduce
2 from three lanes to one lane of traffic.

3 How was that reduction in lanes and traffic
4 volume taken into account in the traffic study that you have
5 submitted? Which scenario was used in the traffic study?

6 MR. WELLS: Just for the record, I didn't say one
7 lane, I said a reduction in the pavement width.

8 MR. EDWARDS: Oh.

9 MR. WELLS: For the record, I'm Marty Wells,
10 Traffic Consultant to Dreyfus. In our study, we did look at the
11 pedestrian volumes. We looked at the vehicle volumes and
12 determined that the volume was such that it could be handled
13 with less pavement than is out there today.

14 The width of the pavement today invites speed.
15 We want the traffic to be slow. We think a single lane will
16 accommodate the volumes we're forecasting.

17 MR. EDWARDS: So your traffic study took into
18 account the reduced lane width?

19 MR. WELLS: Yes.

20 MR. EDWARDS: My next question, I think, goes
21 back to you Mr. Braunohler. You talked about access to Union
22 Station being afforded through the entrances on 2nd Street and
23 from the H Street overpass. Where will the entrances be along
24 2nd Street?

25 MR. BRAUNOHLER: The entrances along 2nd Street

1 are the entrances to Buildings 2 and 3.

2 MR. EDWARDS: Now why is there no entrance at F
3 Street so pedestrians -- so the neighbors could walk down F
4 Street, enter the SEC lobby and then go directly into Union
5 Station?

6 MR. BRAUNOHLER: We have not offered that as a
7 route to Union Station due to resistance on the part of the SEC
8 to having that public access go right through their lobby.

9 MR. EDWARDS: You've just described that you
10 would provide access through Buildings 2 and 3 to Union Station.

11 What if the tenants of Buildings 2 and 3 were to be federal
12 agencies such as the SEC? Would you still provide the access?

13 MR. BRAUNOHLER: What we have said when this
14 question came up before the Commission of Fine Arts is that if
15 that access -- if that user were to request that that access be
16 denied, we would have to come back to the Commission and we
17 would have to come back, I suppose, to the Zoning Commission.

18 MR. EDWARDS: Thank you.

19 CHAIRPERSON MITTEN: Thank you. And I don't
20 believe we have any other parties represented. So I think
21 that's the end of the cross examination of your rebuttal
22 witnesses.

23 Now I'm going to ask you if you would submit your
24 closing argument in writing unless you feel a great compulsion
25 to deliver it.

1 MR. QUIN: No, I feel a very propulsion and
2 compulsion but I wanted to -- may I just suggest one point?

3 CHAIRPERSON MITTEN: Certainly.

4 MR. QUIN: And then not give the other points,
5 we'll put that in writing.

6 I've been thinking about Mr. May's comment on the
7 setback and the question of what the trade offs are. You know,
8 whether there is a trade off. And having been at both Fine Arts
9 -- actually three, I've been at two but I heard the transcript
10 on the other -- Fine Arts Commission hearings.

11 The Fine Arts Commission was concerned primarily
12 about the massiveness or the monolithic appearance of 2nd
13 Street. To them, the big trade off was if you break this up,
14 for example, if you look between the third building and the
15 second building, you have what appears to be a whole separation.

16 And anyone would think that that is a separate
17 building the way it's set back. And this became very important.

18 So as you start closing those up, then you necessarily have to
19 find additional space. It's sort of a shift. If you push back,
20 you close in.

21 And that's what happened with Fine Arts. They
22 valued other points more than the setback. And I guess it's all
23 in the eye of the beholder.

24 But I think it clearly is a trade off. And, of
25 course, you all know the jurisdiction of Fine Arts and we'll

1 address that in the memorandum.

2 So we appreciate your letting me not speak
3 tonight.

4 (Laughter.)

5 CHAIRPERSON MITTEN: Blame Mr. Sher for taking --

6 MR. QUIN: No, I won't blame him.

7 CHAIRPERSON MITTEN: No, it's always interesting
8 to hear Mr. Sher and he very infrequently gets to fully expand
9 on his subject matter.

10 MR. SHER: Right.

11 CHAIRPERSON MITTEN: Before I read the closing,
12 let's figure out what dates we're going to have submissions due
13 by.

14 MR. BASTIDA: Madam Chairman. Should we recap
15 all the things that we have been requesting?

16 CHAIRPERSON MITTEN: That would be a good idea.

17 MR. BASTIDA: Okay. You went quite quickly on
18 the requests that you make toward the end and I wrote them. But
19 if you don't mind repeating those --

20 CHAIRPERSON MITTEN: Well those are really not
21 separate submissions. Those are what I'd like the Applicant to
22 address --

23 MR. BASTIDA: Right.

24 CHAIRPERSON MITTEN: -- In their Proposed
25 Findings of Fact and Conclusions of Law.

1 MR. BASTIDA: Oh, okay.

2 CHAIRPERSON MITTEN: I think the only thing that
3 we're interested in that would be a new submission is what Mr.
4 Parsons had requested which would be a study of the design as it
5 relates to security, particularly at the entrances.

6 MR. BASTIDA: Yes, I have that. But I have a
7 couple of others.

8 CHAIRPERSON MITTEN: Okay.

9 MR. BASTIDA: I have the width of 2nd Street and C
10 Street.

11 CHAIRPERSON MITTEN: Yes.

12 MR. BASTIDA: Parts of the original traffic
13 report that were going to be extrapolated and presented
14 separately.

15 CHAIRPERSON MITTEN: Yes.

16 MR. BASTIDA: There was a lady, and I couldn't
17 write a name, requested to have the record open to provide her
18 testimony in writing.

19 CHAIRPERSON MITTEN: Right, that was Marilyn
20 Saks-McMillion.

21 MR. BASTIDA: Thank you. Now there was an area
22 in which I'm not so clear that it was requested or not but it
23 was the area of the requirement of SEC versus setbacks and glass
24 areas and how that was depicted on the footprint.

25 That went beyond, in my perception, of the

1 ability to attract lawyers and retain lawyers and accountants.

2 But it was the area of the lineal, that was my
3 perception of the lineal amount of glass on the peripheral of
4 the building that SEC would like to have in order to provide the
5 attractiveness to their employees.

6 CHAIRPERSON MITTEN: I don't -- does anybody
7 recall an additional submission on that subject?

8 (No response.)

9 CHAIRPERSON MITTEN: No.

10 MR. BASTIDA: Okay.

11 COMMISSIONER MAY: Madam Chair, I'm sorry to
12 interrupt.

13 CHAIRPERSON MITTEN: Yes.

14 COMMISSIONER MAY: I was just wondering whether,
15 in fact, in order to understand some of the statements that were
16 made about the building setback and floor plate and glass and
17 everything else, that some of these requirements which were
18 apparently spelled out in the original RFP that the SEC had done
19 for the space, whether we could get some summary document of
20 that?

21 CHAIRPERSON MITTEN: That would be helpful.

22 COMMISSIONER MAY: I don't think we really want
23 to see the entire RFP.

24 CHAIRPERSON MITTEN: Right.

25 COMMISSIONER MAY: But maybe that section that

1 has those critical requirements.

2 MR. QUIN: We can do that.

3 CHAIRPERSON MITTEN: That would be -- that's a
4 good idea. Thank you. Did you have anything else Mr. Bastida?

5 MR. BASTIDA: No, I don't have anything. The
6 following up question would be how long the Applicant believes
7 that the Applicant needs in order to submit all that for the
8 record, including the closing statement.

9 MR. QUIN: Yes, I have other items. I just want
10 to make sure that --

11 CHAIRPERSON MITTEN: Certainly.

12 MR. QUIN: -- I had a question about whether you
13 needed additional information on the environmental report, you
14 remember I raised a legal objection to that?

15 CHAIRPERSON MITTEN: Yes. Let me just ask one
16 question which is based on the information that's been gathered
17 of Phase 1 and limited Phase 2 environmental, is there anything
18 in terms of the status of any contamination on the site that
19 would cause there to be action taken immediately? Or is it only
20 once the soil is disturbed that there's a concern?

21 MR. QUIN: I don't think there's a concern at
22 all. But, in any event, we will submit -- why don't we just
23 submit the letter in response --

24 CHAIRPERSON MITTEN: Fine. Okay.

25 MR. QUIN: -- And again, I don't think it's

1 within the jurisdiction of the Zoning Commission but we will
2 submit the responsive letter just to have it in the record --

3 CHAIRPERSON MITTEN: Okay.

4 MR. QUIN: -- And that will answer that I think.

5 CHAIRPERSON MITTEN: Okay, thank you.

6 MR. QUIN: Then I had the question of Mr. -- I
7 guess it was a combined one about membership in the Committee.
8 We need to provide language perhaps. I think you also touched
9 on that -- the criteria that might -- no, that was a different
10 issue.

11 The membership to the committee we want to be as
12 inclusive as possible. That was some language on that to make
13 sure we had additional -- then we had, and that related to, as
14 Mr. Hood said, a regular person in the community.

15 Expanded scope of survey -- a question on whether
16 we should -- what we could do in terms of -- could there be
17 additional criteria for specific survey increase, as I recall
18 your statement.

19 CHAIRPERSON MITTEN: Well, actually, what I was
20 looking for, and I wasn't looking for separate submissions on
21 the things that I had talked about.

22 But what I was looking for is some, to the extent
23 that we don't expand the survey area, that puts the onus on the
24 Applicant to do the survey, what guidance could the Applicant
25 provide to a homeowner who wants to --

1 MR. QUIN: Okay.

2 CHAIRPERSON MITTEN: -- do a comprehensive, you
3 know, a survey that's going to hold up --

4 MR. QUIN: Yes.

5 CHAIRPERSON MITTEN: -- In a court or whatever.
6 Thanks.

7 MR. QUIN: Yes, I understand. I misunderstood
8 that.

9 CHAIRPERSON MITTEN: Okay.

10 MR. QUIN: I have a question on the excavation
11 for a ramp.

12 CHAIRPERSON MITTEN: Right, reworking --

13 MR. QUIN: Reworking that.

14 CHAIRPERSON MITTEN: Well at least considering
15 the potential for using the H Street ramp for --

16 MR. QUIN: Right.

17 CHAIRPERSON MITTEN: -- Removal of excavated
18 materials in Phases 2 and 3.

19 MR. QUIN: Right. And a limitation of some sort
20 on the F Street garage provision for that if we can figure out
21 whether that can be accomplished with SEC's requirements.

22 CHAIRPERSON MITTEN: Yes.

23 MR. QUIN: A routing for shuttle bus which
24 actually we were prepared to testify. We'll just submit that
25 for the record.

1 And then some thought on LSDBE and First Source
2 and TMP results oriented targets -- ways that might be utilized
3 slightly differently or differently from the way we've been
4 approaching it.

5 CHAIRPERSON MITTEN: Yes.

6 MR. QUIN: Incentives for results.

7 CHAIRPERSON MITTEN: Actually, it's disincentives
8 for lack of performance.

9 MR. QUIN: Well, yes. I can think of another way
10 to do it would be greater incentives as opposed to
11 disincentives.

12 CHAIRPERSON MITTEN: Whatever way you want to
13 approach the problem, Mr. Quin.

14 MR. QUIN: All right, okay, all right. I think
15 that's all I had. Did you have any?

16 (No response.)

17 MR. QUIN: Okay.

18 CHAIRPERSON MITTEN: Okay.

19 MR. QUIN: And we just need to know the timing.

20 CHAIRPERSON MITTEN: Well, I think Mr. Bastida is
21 looking to you to give some sense of how long you need.

22 COMMISSIONER HOOD: Madam Chair, I had also asked
23 for those who have some objections and still some concerns, if
24 we can get a sound byte list. But I actually have what I need.
25 But so nothing gets missed, I still would like for the record

1 to be open so they can submit that if they chose to.

2 CHAIRPERSON MITTEN: Oh, absolutely, yes,
3 absolutely.

4 COMMISSIONER HOOD: I mean it's not that they
5 have to, but if they chose to, that would be advantageous for us
6 to, I think to be able to do our deliberations. Thank you.

7 MR. QUIN: And there were certain people that
8 came initially that were in support that when the first hearing
9 was continued, did not make it back. Can their letters be filed
10 as well?

11 CHAIRPERSON MITTEN: Certainly.

12 MR. QUIN: All right.

13 CHAIRPERSON MITTEN: Opposition, too. Whatever
14 you got.

15 MR. QUIN: I think we can try to shoot for this,
16 Bill, in one week?

17 PARTICIPANT: Yes, one week.

18 MR. QUIN: One week? Can we do this by the 10th?
19 Can we have one, I'm sorry, one minute? One week, we believe
20 we can accommodate that within one week.

21 CHAIRPERSON MITTEN: Okay.

22 MR. McMILLION: Madam Chair?

23 CHAIRPERSON MITTEN: Please come forward. I
24 think that Mr. Bastida's probably already thinking of you
25 though, but --

1 MR. McMILLION: Probably not very kindly.

2 CHAIRPERSON MITTEN: No, he's very concerned.

3 MR. BASTIDA: How did you guess?

4 MR. McMILLION: I'm wondering if we could keep
5 the record open for two weeks in order to give sufficient
6 opportunity for the community to respond as well, those who came
7 the first night or the second night or even came tonight and
8 just tucked out.

9 CHAIRPERSON MITTEN: Well, what Mr. Bastida was
10 suggesting was that we get the additional submissions which, if
11 you're just collecting testimony and so on from folks, get that
12 in in a week, and then give actually until just after Christmas
13 for responses to the additional materials that have been
14 submitted.

15 Because there's a fair amount of material that
16 we've asked for and you're coming up against the holidays and so
17 on. So that would provide until the 28th of December. Because
18 there's not a lot of new material. It's responses coming from
19 the community, as I see it. Is that going to work for you?

20 MR. McMILLION: Well, it's just that, you know,
21 people are hard to find and it takes several days and we work
22 and it's hard to -- I mean this is volunteer for us. I don't
23 know about Mr. Quin, but --

24 CHAIRPERSON MITTEN: I think not.

25 MR. QUIN: It's volunteer for me, too.

1 MR. McMILLION: You know, for the rest of us, you
2 know, it's hard to do this. And we'll probably have to do it on
3 the weekend.

4 CHAIRPERSON MITTEN: Okay, well let's try --
5 let's modify something then. Let's not expand the total amount
6 of time any more but let's shift the amount of -- let's shift
7 within now until the 28th of December, instead of having the
8 submissions due on the 10th, let's say, give me another date in
9 the middle, which would be like the 14th --

10 MR. BASTIDA: Yes.

11 CHAIRPERSON MITTEN: The 14th, is that the end of
12 that week?

13 MR. BASTIDA: That is correct.

14 MR. QUIN: Friday, the 14th.

15 MR. BASTIDA: My concern is the following. The
16 Applicant who's served on all the parties what it submits on the
17 10th, and I was more concerned about the response to the new
18 submissions --

19 CHAIRPERSON MITTEN: Right.

20 MR. BASTIDA: -- For the 28th.

21 CHAIRPERSON MITTEN: Right.

22 MR. BASTIDA: If we can, and we can give to the
23 14th to the community to provide the comments and also to the
24 Applicant regarding the testimony that was already proffered,
25 and they are just putting it in writing, to put it as part of

1 the record.

2 Is my understanding correct?

3 MR. McMILLION: And letters from the community of
4 people who couldn't be here or who were here and couldn't be
5 heard.

6 CHAIRPERSON MITTEN: Okay.

7 MR. BASTIDA: Do you want to include that?
8 Because you see, that was not my understanding when I, you know
9 --

10 CHAIRPERSON MITTEN: We're going to take some --
11 we'll take some additional letters of folks that weren't here to
12 testify. We'll take letters in support, we'll take letters in
13 opposition.

14 MR. McMILLION: The 14th?

15 CHAIRPERSON MITTEN: How does a deadline of the
16 14th?

17 MR. McMILLION: Yes.

18 CHAIRPERSON MITTEN: And then responses due the
19 28th. Okay.

20 MR. QUIN: So that just means we have two dates
21 to worry about now. Everything we file by the 14th and then any
22 responses to all of that by the 28th?

23 CHAIRPERSON MITTEN: Yes.

24 MR. BASTIDA: Okay, but you are --

25 CHAIRPERSON MITTEN: And then --

1 MR. QUIN: But why should we have a different
2 date? I'm just saying --

3 MR. BASTIDA: No, no. I think that --

4 CHAIRPERSON MITTEN: No, you --

5 MR. BASTIDA: May I clarify? Okay, you are
6 supposed to file by the 10th of December everything that has
7 been requested.

8 CHAIRPERSON MITTEN: No, everybody gets the 14th
9 and the 28th.

10 MR. BASTIDA: So it's only --

11 CHAIRPERSON MITTEN: Right.

12 MR. BASTIDA: Well fine, then, that makes it
13 easier.

14 CHAIRPERSON MITTEN: Yes, right, yes. And then
15 the Proposed Findings of Fact and Conclusions of Law?

16 MR. BASTIDA: Usually that is a week later. That
17 means that it would be the 7th of January of 2002 but that means
18 that if we get it that late, the Commission will not be able to
19 consider it for its January 10th meeting.

20 MR. QUIN: We will submit the Findings of Fact
21 and Conclusions of Law on the 28th, the same date.

22 CHAIRPERSON MITTEN: Well there's also the
23 parties that get the opportunity to do that.

24 MR. QUIN: Right. But I mean everybody, if they
25 just, if we have the two dates, it makes it simple it seems to

1 me. We file all the papers and then we respond on the 28th with
2 our Findings of Fact and Conclusions of Law.

3 MR. BASTIDA: Then the community will have to
4 provide their Findings of Fact and Conclusion of Law on the 28th
5 also.

6 MR. QUIN: Right.

7 CHAIRPERSON MITTEN: Can you do that Mr.
8 McMillion?

9 MR. McMILLION: I hope so. It's a month away.
10 You know, again, the problem with the community response in
11 order for it to be an intelligent community response and be, you
12 know, for us to have the time to spend on this, it's going to
13 have to be weekends and evenings. And it really, you know, it's
14 a problem. Because there are a lot of people involved in this.

15 CHAIRPERSON MITTEN: I understand --

16 (PA went out.)

17 MR. BASTIDA: -- provided by the community their
18 Finding of Fact and Conclusion of Law and if the Applicant would
19 like to do the same thing --

20 MR. McMILLION: Yes.

21 MR. BASTIDA: -- Then that would give us enough
22 time to do that.

23 (PA went out.)

24 CHAIRPERSON MITTEN: -- I'll just read the
25 closing statement and we'll be -- we're cool. Okay.

1 MR. BASTIDA: Madam Chairman, remember that it's
2 12:00 noon.

3 CHAIRPERSON MITTEN: I've got that written down
4 in bold on this piece of paper.

5 MR. BASTIDA: Okay.

6 CHAIRPERSON MITTEN: Okay.

7 MR. BASTIDA: But still you don't realize how
8 many people fail to provide it by noon.

9 CHAIRPERSON MITTEN: Okay. But it's never
10 because I fail to say it, right?

11 MR. BASTIDA: No.

12 CHAIRPERSON MITTEN: Well, I would like to thank
13 everyone for their participation in this hearing and your
14 patience at these three evenings of hearings that we've had. I
15 think it's been very helpful for the Commission.

16 The record in the case is closed except for the
17 specific information that we requested. And that information
18 must be filed no later than 12:00 noon, December 14th in Suite
19 210 of this building.

20 Any party to the case may file a written response
21 to any information or report filed after the close of the
22 hearing. Those responses should be filed no later than December
23 28th, again, by noon.

24 Parties in the case are also invited to submit
25 Proposed Findings of Fact and Conclusions of Law by January 7,

1 2002, by noon in Suite 210 of this building.

2 The Commission will make a decision in this case
3 at one of its regular monthly meetings following the closing of
4 the record. These meetings are held at 1:30 p.m. on the second
5 Monday of each month, with some exceptions, and are open to the
6 public.

7 If anyone is interested in following the case
8 further, please contact Mr. Bastida to determine whether this
9 case is on the agenda of a particular meeting.

10 I now declare this public hearing adjourned.

11 (Whereupon, the hearing went off the
12 record at 10:20 p.m.)

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